IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Case No.

Supreme Court, U.S.
FILED
JAN 3 1984
ALEXANDER L. STEVAS

ROBERT ALLAN TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

83-6148

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT OF
FLORIDA

JAMES R. WULCHAK
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ATTORNEYS FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES

Case No.

ROBERT ALLAN TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

QUESTION PRESENTED

Whether Petitioner was denied his constitutional rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution where the Florida Supreme Court left unredressed the trial court's denial of Petitioner's motion to suppress his statement made in Texas where Petitioner was advised of the legal requirement in Texas that confessions must be in writing before they can be introduced as evidence in court?

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OPINION BELOW

The opinion and judgment of the Supreme Court of Florida sought to be reviewed via this Petition is reported as Teffeteller v. State, 439 So.2d 840 (Fla. 1983). It is reproduced in the appendix as item one. (A 1-9)

JURISDICTION OF THE SUPREME COURT

The Supreme Court of Florida issued the opinion in this case on August 25, 1983. (A 1-9) Petitioner filed a Motion for Rehearing (A 10-11) which was denied on November 1, 1983. (A 12) The mandate was issued by the Florida Supreme Court on December 9, 1983. (A 13) Petitioner asserted below and asserts here a deprivation of his rights as guaranteed under the United States Constitution. Title 28 United States Code, Section 1257(3) and Rule 17 of the United States Supreme Court Rules confers certiorari jurisdiction in this Court to review the judgment in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment V to the Constitution of the United States:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life, or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Amendment VIII to the Constitution of the United States:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

3. Amendment XIV, Section 1 to the Constitution of the United States, in part:

> All persons born or naturalized in the Unites States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within this jurisdiction the equal protection of the laws.

4. Section 921.141, Florida Statutes (1981) which is set forth in the Appendix as item four. (A 14-15)

STATEMENT OF THE CASE

Petitioner was convicted following a jury trial in Volusia County, Florida, of murder, the use of a firearm in the commission of a felony and sentenced to death for the murder. (A 16-17)

Prior to his trial, Petitioner's counsel filed a second supplemental motion to suppress among other things certain statements or admissions of the Petitioner which were illegally obtained. (A 18-22) Following a hearing, the trial judge denied the motion. (A 23-24) Appellant also gave a taped statement to Florida officials one week after his confession to Texas officials. (A 25-26) Petitioner objected to the introduction of this taped statement at trial. (A 62-63)

While this point was raised in Petitioner's direct appeal to the Florida Supreme Court (A 64-69), the Florida Supreme Court omitted any reference to this argument in the opinion affirming Petitioner's conviction. (A 1-9) Petitioner's death sentence was vacated and remanded to the trial court for a new sentencing proceeding based on other grounds. (A 5-8)

STATEMENT OF THE FACTS

In January 1979, Peyton Moore was walking back to his home in Ormond Beach after jogging on the beach. He was stopped by Petitioner and George Overton in a car driven by Petitioner. Overton asked for Moore's wallet. Moore told the man that he had

no money. A shotgun was then pointed out the passenger side window at Moore and fired. The car sped away. Moore sustained severe injury due to the shotgun blast but remained conscious and coherent for about three hours. He was given emergency aid. At both the scene of the shooting and the hospital, Moore gave a statement to the police describing what happened. He later died on the operating table. Eventually, Petitioner was arrested after a series of travels around the country with Overton and others and indicted for the murder. The first trial ended in a mistrial due to improper references, prompted by questions from the court to a state witness, relating to the murder of Overton by Petitioner in Texas. The trial judge then recused himself. At the new trial, Petitioner was convicted and sentenced to death. (A 3)

It is clear from the record that, prior to Appellant's interview with Texas officials, he was informed of the standard warnings pusuant to Miranda v. Arizona, 384 U.S. 436 (1966), or at least reminded of a previous reading of those rights. However, the Texas officials went on to advise him of the applicable Texas law on oral statements. (A 78-79) Sam Baxter, a prosecuting attorney in Texas, personally told the appellant that oral confessions were inadmissible under Texas law with a couple of very limited exceptions. (A 78-79) The Texas authorities told the Petitioner that they were ignorant of the law in Florida on this issue. Petitioner testified that they may have taken this position on the Florida law, but was unsure if this had been communicated to him. (A 100-104)

Subseqently, Eaton and Legg arrived in Texas at a later date to interview the Petitioner and obtained a written waiver from him. (A 108) This taped statement was played for the jury at trial over defense objection. (A 25-61)

REASONS FOR GRANTING THE WRIT

PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE THE TRIAL COURT DENIED HIS MOTION TO SUPPRESS AND ALLOWED HIS CONFESSIONS TO BE INTRODUCED INTO EVIDENCE WHERE PETITIONER HAD BEEN MISLED AS TO THE APPLICABLE LAW REGARDING THE INTRODUCTION OF CONFESSIONS.

"The State has a heavy burden of proving with unmistakable clarity that a statement or confession has been freely and voluntarily given before it is admitted against an accused." Cason v. State, 373 So.2d 372, 375 (Fla. 2d DCA 1979). A trial court must consider the totality of the circumstances surrounding a confession in ruling on the issue of voluntariness. Hampton v. State, 354 So.2d 443 (Fla. 2d DCA 1978).

In Miranda v. Arizona, 384 U.S. 436, 478-479 (1966), this Court established the procedural safeguards to be employed prior to the admission into evidence of any statements of an accused made while in police custody. This Court has set high standards of proof for the waiver of constitutional rights. Johnson v. Zerbst, 304 U.S. 458, 364 (1938). Such a waiver must be knowingly and intelligently made.

> There is insistence here that petitioner waived this constitutional right.... It has been pointed out that "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights and that we "do not presume acquiesence in the loss of fundamental rights." [citations omitted] A waiver is ordinarily an intentional relinquishment or abandonement of a known right or privilege.

If an interrogation occurs without the benefit of counsel, and a statement is taken, a heavy burden rests on the state to demonstrate that the defendant knowingly and voluntarily relinquished his fundamental rights. Miranda v. Arizona, supra at 475. The issue of whether waiver has been knowingly and intelligently made and whether the subsequent confession was voluntarily given will be resolved only upon consideration of the "totality of the circumstances" surrounding the waiver and confession. Greenwald v. Wisconsin, 390 U.S. 519 (1968) and Clewis v. Texas, 386 U.S. 707 (1967). This Court, in Townsend v. Sain, 372 U.S. 293 (1963), held that for a confession to be

voluntary, it must be the product of rational intellect and a free will, without any physical or psychological pressures. Cf. Blackburn v. Alabama, 361 U.S. 199 (1960).

Petitioner contends that the taped statement given to the Florida officials and Texas as well as the statement testified to by Texas Ranger Glenn Elliott at trial were obtained in violation of his constitutional rights. It is clear from the record that, prior to his interview with the Texas officials, he was informed of the standard Miranda warnings. However, the Texas officials went on to advise him of the applicable Texas law on oral statements. Sam Baxter, a prosecuting attorney in Texas, personally told the Petitioner that oral confessions were inadmissible under Texas law with two (2) very limited exceptions. The Texas authorities went on to tell the Petitioner that they were ignorant of the law in Florida on this issue. (A 78-79, 100-104) Petitioner was unsure if this last advisement concerning the difference in Florida law was heard by him. (A 100-104)

Petitioner contends that the resulting confusion in his own mind as to the applicable law resulted in the coercion of his statements. Petitioner testified that, as far as he knew, "the law was the law". (A 102) Petitioner maintained that he was under the impression that oral statements made by him would not be admissible in Florida or elsewhere. (A 100-104) The confusion is easy to understand when one realizes that both the Texas and Florida authorities included in their standard warnings the fact that any statement could and would be used against him in a court of law. In the interview with the Petitioner, the Texas official's supplemental clarification of Texas law limited this particular Miranda warning to be essentially void.

The advice given to Petitioner on Texas law looms even larger when one considers the source. The legal advise came from a Texas officer who was both a lawyer and a prosecutor. (A 72-73) Surely, Petitioner was not careless in relying upon the advise. It is understandable that the Petitioner had an honest belief that his oral statements would be inadmissible. It is easy to imagine his expression of disbelief when Ranger Glenn

Elliott testified as to the content of Petitioner's oral statement of which the Petitioner was assured would be inadmissible. Although the inducement of the Petitioner's statement was not a result of any intentional deception or misrepresentation on the part of law enforcement officers, Petitioner submits that the effect was the same. Petitioner contends that this contributed to the totality of the circumstances which rendered the confession inadmissible.

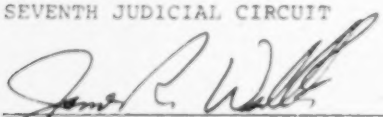
As a result of the trial court's denial of the motion to suppress the confession and the Florida Supreme Court's failure to redress this deprivation of constitutional rights, Petitioner has been denied his fundamental rights guaranteed by the United States Constitution. In light of the extremely damaging nature of the confession, it cannot be said that the introduction of it did not prejudice the Petitioner.

CONCLUSION

Upon the foregoing reasons, Petitioner prays that this Court grant a Writ of Certiorari.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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MEMBER OF THE BAR OF THE UNITED STATES SUPREME COURT

ORIGINAL

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IN THE

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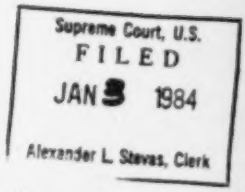
83-6148 Case No. _____



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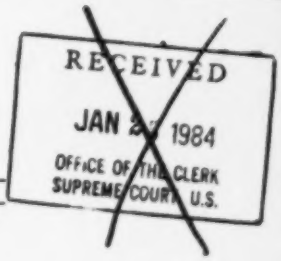

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

ROBERT ALLAN TEFFETELLER, petitioner in the above-styled cause hereby moves this Court, by his undersigned counsel, for leave to proceed in forma pauperis and in support hereof shows as follows:

1. An affidavit signed by petitioner is attached hereto, wherein petitioner sets forth the fact that he is indigent and unable to pay or give security for the fees and costs attendant to this proceeding.

2. Petitioner was adjudged insolvent for the purpose of appeal in the Supreme Court of Florida and was represented there by appointed counsel.

WHEREFORE, it is respectfully requested that petitioner be permitted to proceed in forma pauperis in this matter.

Respectfully submitted,

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida
32014-6183
Phone: (904) 252-3367

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, Department of Legal Affairs, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and to Mr. Robert A. Teffeteller, Inmate No. 075785, Florida State Prison, Post Office Box 747, Starke, Florida 32091 this 23rd day of January, 1984.

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida
32014-6183
Phone: (904) 252-3367

Attorney for Petitioner

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT ALLAN TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, ROBERT ALLAN TEFFETELLER being first duly sworn, depose and say that I am the Petitioner, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE THE TRIAL COURT DENIED HIS MOTION TO SUPPRESS AND ALLOWED HIS CONFESSIONS TO BE INTRODUCED INTO EVIDENCE WHERE PETITIONER HAD BEEN MISLEAD AS TO THE APPLICABLE LAW REGARDING THE INTRODUCTION OF CONFESSIONS.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. _____

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. _____

3. Do you own any cash or checking or savings account? YES

   a. If the answer is yes, state the total value of the items owned. $160 EA

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

   a. If the answer is yes, describe the proeprty and state its approximate value. _____

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Robert Allan Toffeteller
ROBERT ALLAN TOFFETELLER

SUBSCRIBED AND SWORN TO before me this 19 day of January, 1984.

Bonnie Hannigan
Notary Public, State of Florida

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 25, 1987

APPENDIX

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4.	Mandate of the Supreme Court of Florida in Teffeteller v. State 439 So.2d 840 (Fla. 1983)	A 13
5.	Section 921.141, Florida Statutes (1981)	A 14
6.	Judgment and Sentence	A 16
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14.	Waiver of Rights form	A 108

lows: Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or *method* of the advertising suggests that it is *inherently* misleading or when *experience has proven* that *in fact* such advertising is subject to abuse, the states may impose appropriate restrictions. Misleading advertising may be prohibited entirely. But the states may not place an absolute prohibition on certain types of *potentially misleading information*....

102 S.Ct. at 937 (emphasis added).

The Court further stated:

> Even when a communication is not misleading, the state retains some authority to regulate. But the state must assert a *substantial* interest and the interference with speech must be in proportion to the interests served.

Id. (emphasis added).

[5] Having already found that "The Law Team, Fetterman and Associates" is neither inherently nor operatively misleading, we find that The Bar has not met its burden under *RMJ*.

In the area of professional advertisement of legal services this Court remains mindful of the delicate balance between constitutional freedom of expression and legitimate restrictions upon the unrestrained exercise of that privilege. We are also cognizant that the special characteristics of such services afford opportunities to mislead and confuse that are not present when standardized services are offered to the public. Nevertheless, in the present case The Bar has failed to establish to this Court's satisfaction the requisite substantial justification for the attempted restraint on respondent's use of "The Law Team, Fetterman and Associates." *RMJ; Central Hudson Gas*, 447 U.S. at 563-64, 100 S.Ct. at 2350; *Bates*, 433 U.S. at 350, 97 S.Ct. at 2692. Accordingly, respondent may continue in his use of such name to identify his law practice, and to advertise legal services provided he, in fact, has associates employed in his firm.

[6] However, we do find that the radio advertisement referred to as the "Love 94 Tape," which was employed by respondent, contained sensational language in violation of Florida Bar Code of Professional Responsibility D.R. 2-101(C)(5) and D.R. 2-101(C)(6). Even though respondent has voluntarily ceased using these advertisements, we feel compelled to caution against any further use of such advertisements. No sanctions will be imposed.

Our approval of the use of the words "law team" and "associates" together with the legal profession's acceptance of the term "law clinic" should not, however, be taken as an invitation to lawyers to experiment with other terminology to attract the public's attention. This appears to be the outer limit allowable.

The motion of the Florida Bar to tax costs in the amount of $951.03 is denied.

It is so ordered.

ADKINS, BOYD, OVERTON, McDONALD and SHAW, JJ., concur.

ALDERMAN, C.J., and EHRLICH, J., dissent.

Robert Alan TEFFETELLER, Appellant,

v.

STATE of Florida, Appellee.

No. 60337.

Supreme Court of Florida.

Aug. 25, 1983.

Rehearing Denied Nov. 1, 1983.

Defendant was convicted in the Circuit Court, Volusia County, S. James Foxman, J., of murder and using firearm in commission of a felony, and he appealed. The

upreme Court held that: (1) defendant as not denied due process when trial court erruled his objection and denied his mo-on for new trial which was based upon ate's improper bolstering of witness' tes-nony through the introduction of a prior nsistent statement; (2) trial court did not r in admitting victim's dying declaration;) since there was substantial, competent idence to uphold defendant's murder con-ction under a premeditation theory, any ror in instructions on underlying felony of tempted robbery became harmless; and) trial court erred during penalty phase in nying his motion for a cautionary instruc-n or a mistrial based upon improper and ejudicial comments by prosecutor that if fendant did not receive death penalty, he ould be paroled in 25 years and would kill ain.

Affirmed in part and vacated and re-anded in part.

Boyd, J., concurred in part and dissent-in part, and filed opinion.

Constitutional Law ⇐269
Criminal Law ⇐1170½(1)

Defendant was not denied due process hen trial court overruled his objection and nied his motion for new trial which was sed upon State's alleged improper bol-ering of witness' testimony through intro-ction of a prior consistent statement, ce question was designed to tie testimony "time-wise" with prior testimony and to ate it in perspective; furthermore, even trial court's ruling were error, the error s harmless since result would not have en any different even had witness not tified at all.

Homicide ⇐203(3)

Shooting victim's initial cry that he s "going," coupled with statements from tending doctors that terminal patients on e "final glidepath" are aware of their pending death and that doctors believed, ven nature of wound and victim's lucidity, at victim knew he was dying, were suffi-nt predicates to allow introduction of dying declaration of the victim in murder prosecution.

3. Homicide ⇐329

Whether a proper and sufficient predicate has been laid for admission in evidence of a dying declaration is a mixed question of law and fact and will not be disturbed unless clearly erroneous.

4. Criminal Law ⇐1134(3)

Evidence showed that murder conviction could be sustained not solely under felony-murder theory but also under a premeditation theory, thereby mooting alleged inadequacies in underlying felony instructions.

5. Weapons ⇐4

Defendant was properly convicted for use of a firearm in the commission of a felony.

6. Criminal Law ⇐723(1)

Trial court erred during penalty phase of murder prosecution in denying defendant's motion for a cautionary instruction for a mistrial based upon improper and prejudicial comments by prosecutor recommending that defendant receive death penalty or else he would be paroled in 25 years and would kill again.

7. Criminal Law ⇐1152(1)

Comments of counsel during course of trial are controllable in discretion of trial court, and an appellate court will not overturn the exercise of such discretion unless a clear abuse has been made to appear.

8. Homicide ⇐354

Consideration as aggravating factor in sentencing defendant that murder was committed during course of an attempted robbery did not improperly create a presumption for imposition of death penalty for all persons who commit first-degree felony-murder in contrast to those who murder by premeditated design.

9. Homicide ⇐354

Fact that victim lived for a couple of hours in undoubted pain and knew that he was facing imminent death, horrible as that prospect may have been, did not set murder

apart from norm of capital felonies, and thus fact could not be used as an aggravating factor in sentencing defendant.

10. Criminal Law ⇐986.2(1)

It is within trial court's province to decide whether a mitigating circumstance is proven and the weight to be given to it in sentencing defendant.

11. Criminal Law ⇐986.2(4)

Trial court did not err in finding a forgery conviction and a prison escape to be a significant history of criminal activity, thereby precluding existence of mitigating factor in sentencing of lack of significant history of prior criminal activity.

12. Criminal Law ⇐986.2(4)

At resentencing, trial court could consider defendant's Texas murder conviction and Florida aggravated assault conviction.

13. Homicide ⇐354

Defendant's admissions that he himself shot victim belied argument that trial court should have found in mitigation in sentencing him for murder that he was only an accomplice to the triggerman.

14. Criminal Law ⇐984(7)

Indictment and Information ⇐191(4)

Where defendant's murder conviction could properly be based on premeditation, firearms offense was not a lesser included offense of premeditated murder, and thus separate sentences were not proscribed.

James B. Gibson, Public Defender, and Michael S. Becker and Christopher S. Quarles, Asst. Public Defenders, Seventh Judicial Circuit, Daytona Beach, for appellant.

Jim Smith, Atty. Gen. and Richard B. Martell, Asst. Atty. Gen., Daytona Beach, for appellee.

PER CURIAM.

Robert Teffeteller appeals his conviction for the first-degree murder of Peyton Moore and his sentence of death. He also appeals his sentence for the charge of using a firearm in the commission of a felony, for which he received a concurrent term of three years. We have jurisdiction of this cause pursuant to article V, section 3(b)(1), Florida Constitution. Finding no merit to any of appellant's challenges to his conviction, we affirm the conviction. We also affirm the sentence for the firearms offense. However, we reverse the sentence of death imposed after a jury recommendation of death because of improper and prejudicial comments by the prosecutor during the penalty phase and remand for a new sentencing hearing before a new jury.

In January 1979, Peyton Moore was walking back to his home in Ormond Beach after jogging on the beach. He was stopped by appellant and George Overton in a car driven by appellant. Overton asked for Moore's wallet. Moore told the men he had no money. A shotgun was then pointed out the passenger side window at Moore and fired. The car sped away. Moore sustained massive abdominal damage due to the shotgun blast but remained conscious and coherent for about three hours. He was given emergency aid both at the scene and at the hospital. At both locations, he gave a statement to the police describing what happened. Moore later died on the operating table. Eventually, appellant was caught after a series of travels around the country with Overton and others and indicted for the murder. Trial proceeded but on the second day the court declared a mistrial due to improper references, prompted by questions from the court to a state witness, relating to the murder of Overton by appellant in Texas. The trial judge then recused himself. At the new trial, appellant was convicted and sentenced to death.

Appellant raises a total of fourteen issues on this appeal. We will discuss six; the others have been carefully considered by this Court and held to be meritless.

[1] Appellant first argues that he was denied due process when the trial court overruled his objection and denied his motion for new trial which was based upon the state's improper bolstering of a witness's testimony through the introduction of a pri-

or consistent statement. The testimony of Donald Poteet was both lengthy and incriminating to the appellant. Among other things, Poteet testified that appellant pointed out the street where he had shot Moore. During the testimony, the prosecutor asked, "And did you tell Lieutenant Blankenship basically the same thing that you have testified here today?" Poteet answered, "Yes, sir." Appellant's timely objection was overruled. Appellant argues that a prior consistent statement may not be introduced to shore up a witness's testimony unless and until an effort is made to impeach his testimony. *Van Gallon v. State*, 50 So.2d 882 (Fla.1951); *Trainer v. State*, 346 So.2d 1081 (Fla. 1st DCA), *cert. denied*, 352 So.2d 175 (Fla.1977). While this is a correct statement of the law, it lacks applicability to the instant set of facts. The trial court found that the question was designed to tie Poteet's testimony in "time-wise" with prior testimony and to locate it in perspective; the judge described it as "making an envelope." Additionally, the subsequent testimony of Poteet revealed a necessity to identify and localize the statement in light of other testimony that appellant had later instructed Poteet and another confident to change their stories and to claim that the now-deceased Overton was the triggerman.

Even if the trial court's ruling were error, we find that it was harmless. "A judgment will not be reversed unless the error was prejudicial to the substantial rights of the appellant." *Palmes v. State*, 397 So.2d 648, 653 (Fla.), *cert. denied*, 454 U.S. 882, 102 S.Ct. 369, 70 L.Ed.2d 195 (1981). "In determining whether an erroneous ruling below caused harm to the substantial rights of the defendant, an appellate court ... inquires generally whether, but for the erroneous ruling, it is likely that the result below would have been different." 397 So.2d at 653–54. Almost identical testimony to Donny Poteet's was elicited from witnesses Kuykendall and Danny Poteet. In fact, these two individuals' statements were more incriminating and more damaging to appellant than the statement objected to. The result below clearly would not have been any different even had Donny Poteet not testified at all. We thus hold that the error, if any, was harmless.

[2, 3] Appellant's second claim is that the trial court erred in finding certain hearsay evidence admissible under the dying declaration exception. The trial court allowed into evidence Peyton Moore's statements to Officer Morgan which described the nature of the robbery encounter, and in particular a description of the passenger of the car. Earlier, Morgan had testified that Moore had commented, "Oh God, I'm going." In response to that comment, attending doctors had consoled Moore and told him he should not worry. He died soon thereafter. Appellant argues that there was insufficient testimony to establish that Moore actually believed and was aware of his dying condition and thus a sufficient predicate was not laid. We disagree.

> It is not necessary that the evidence ... should consist of express utterances of the deceased to the effect that he knew he was going to die, or could not live, or would never recover. It may be gathered from any circumstance or from all the circumstances of the case, and is sufficient if the evidence ... satisfies the judge that the deceased knew and appreciated his condition as being that of an approach to certain and immediate death.

Lester v. State, 37 Fla. 382, 385, 20 So. 232, 233 (1896). *See also Covington v. State*, 145 Fla. 680, 200 So. 531 (1941); *Johnson v. State*, 113 Fla. 461, 152 So. 176 (1934); *Mills v. State*, 264 So.2d 71 (Fla. 1st DCA 1972). In the case sub judice, Moore's initial cry that he was "going," coupled with the statements from attending Doctors Knight, Schwartz, Doig and Marino that terminal patients on the "final glidepath" are aware of their impending death and that the doctors believed, given the nature of the wound and Moore's lucidity, that Moore knew he was dying, are sufficient predicates to allow the introduction of the dying declaration of Moore. Whether a proper and sufficient predicate has been laid for the admission in evidence of a dying declaration is a mixed question of law and fact and will not be disturbed unless clearly

erroneous. *Johnson v. State.* We cannot say that it was clearly erroneous for the trial court to admit the dying declaration in the instant case.

[4] Appellant next argues that the trial court erred in failing to instruct the jury on the essential elements of the underlying felony. He argues that since the evidence showed, at most, felony murder, the court inadequately instructed on the underlying felony of attempted robbery. In particular, he claims that the instructions given were deficient in that they omitted aid in defining "attempt" and "intent to permanently deprive another of property." We believe that appellant's argument fails because his initial premise is invalid, thus we do not need to address the adequacy of the instruction.[1] We find that the evidence shows that the conviction can be sustained not solely under a felony murder theory but also under a premeditation theory. The latter being valid, the alleged inadequacies in the underlying felony instructions become moot. There is evidence in the record that could have been believed by the jury that proves beyond a reasonable doubt that appellant was indeed the triggerman in this murder and that appellant acted from a premeditated design to effect the death of Peyton Moore. Of significance were appellant's admissions to the Poteet brothers and Richard Kuykendall that he had murdered the victim and the later attempts by the appellant to have these three individuals change their story and blame the murder on the deceased Overton. Circumstantial evidence is admissible to establish premeditation. *See Sireci v. State,* 399 So.2d 964 (Fla.1981), *cert. denied,* 456 U.S. 984, 102 S.Ct. 2257, 72 L.Ed.2d 862 (1982); *Spinkellink v. State,* 313 So.2d 666 (Fla.1975), *cert. denied,* 428 U.S. 911, 96 S.Ct. 3227, 49 L.Ed.2d 1221 (1976); *Larry v. State,* 104 So.2d 352 (Fla.1958). Under the facts of the present case, we believe there is substantial, competent evidence to uphold appellant's conviction under a premeditation theory. That being so, any error in the instructions on the underlying felony of attempted robbery becomes harmless. *Knight v. State,* 394 So.2d 997 (Fla.1981); *Frazier v. State,* 107 So.2d 16 (Fla.1958).

[5] We thus affirm appellant's conviction of murder in the first-degree. Additionally, even though the issue was not raised on this appeal, we have studied the record and found no error in appellant's conviction for the use of a firearm in the commission of a felony. That conviction likewise is upheld.

[6] Appellant's remaining issues relate to the sentences he received for these crimes. He first argues that the trial court erred during the penalty phase in denying his motion for a cautionary instruction or a mistrial based upon improper and prejudicial comments by the prosecutor. We agree. During his argument to the jury, the prosecutor urged the jury to recommend that appellant receive the death penalty or else he would be paroled in twenty-five years and would kill again. Redundantly, the prosecutor argued:

> What you have to be concerned with is this, this Defendant, if you folks recommend mercy and that is the sentence that is imposed, will be eligible for parole in twenty-five years. He's 27 now. He's 52 when he gets out or when he is considered for parole. And you better believe that he will be considered for parole, given the condition of the parole releases in this State.
>
> You look at that. This Defendant released on parole. What do you think is going to happen? He's going to kill again. You better believe he's going to kill again.
>
> He will go after Donny Poteet. He will go after Rick Kuykendall. Does he have to kill again before you think it's the proper case? I don't think so.

1. We note that this Court has previously held that instructions on the elements of the underlying felony in a felony murder need not be as particularized as the instructions required when the felony is the primary charge. *Vasil v. State,* 374 So.2d 465 (Fla.1979), *cert. denied,* 446 U.S. 967, 100 S.Ct. 2945, 64 L.Ed.2d 826 (1980).

You must know that this Defendant will kill again and when he does it will be too late.

* * * * * *

[T]his Defendant will kill again if he is given a chance. I don't see how you can find otherwise.

Don't give him that chance. Don't have to realize after he is paroled and after he kills someone else, perhaps Donald Poteet, perhaps Rick Kuykendall or who knows who he will go after.

* * * * * *

Know that your determination will have a deterring effect on this Defendant and know that it will keep him from being able to kill again. Don't let it happen. Don't let it happen. Don't let Robert Teffeteller kill again.

The trial court denied the motion for mistrial and refused to give a cautionary instruction.

[7] Comments of counsel during the course of a trial are controllable in the discretion of the trial court, and an appellate court will not overturn the exercise of such discretion unless a clear abuse has been made to appear. *Paramore v. State*, 229 So.2d 855 (Fla.1969), *vacated*, 408 U.S. 935, 92 S.Ct. 2857, 33 L.Ed.2d 751 (1972). While "[i]t is extremely difficult to definitely state at what point the line should be drawn between what is doubtfully permissible argument and what is clearly wrong," 229 So.2d at 860, in the instant case the line was clearly drawn too far. "We think that in a case of this kind the only safe rule appears to be that unless this court can determine from the record that the conduct or improper remarks of the prosecutor did not prejudice the accused the . . . [sentence] must be reversed." *Pait v. State*, 112 So.2d 380, 385–86 (Fla.1959). We cannot determine that the needless and inflammatory comments by the prosecutor did not substantially contribute to the jury's advisory recommendation of death during the sentencing phase. We hold that it was reversible error for the trial court to deny appellant's motion for a mistrial or for a cautionary instruction.

This is yet another example of inexcusable prosecutorial overkill, resulting in a sentencing retrial before a jury. The material and human resources of the state are thus squandered. If this were a matter of first impression in this jurisdiction, there might arguably be some justification for counsel's indulging in such elocution, but this Court has previously condemned this type of conduct. The failure to heed what the Court has said before in this area thus necessitates a sentencing retrial. The remarks of the prosecutor were patently and obviously made for the express purpose of influencing the jury to recommend the death penalty. The intended message to the jury was clear: unless the jury recommended the death penalty, the defendant, in due course, will be released from prison and will kill again, this time two of the witnesses who testified against him, and maybe others. There is no place in our system of jurisprudence for this argument. *See Grant v. State*, 194 So.2d 612 (Fla.1967); *Singer v. State*, 109 So.2d 7 (Fla.1959); *Williams v. State*, 68 So.2d 583 (Fla.1953); *Stewart v. State*, 51 So.2d 494 (Fla.1951); *Sims v. State*, 371 So.2d 211 (Fla. 3d DCA 1979).[2] We thus reverse the sentence of death for first-degree murder and remand back to the trial court to hold a new sentencing trial before a jury.

Appellant next argues that the trial court erred in imposing the death sentence in that it incorrectly found certain aggravating factors and failed to find certain mitigating

2. We realize that the cited cases antedate the adoption of Florida's tripartite capital sentencing procedure where the trial jury, the trial judge, and this Court are charged with the responsibility of independently weighing the evidence in aggravation and mitigation to determine whether the imposition of the death sentence is appropriate. Although a jury's sentencing recommendation is only advisory, it is an integral part of the death sentencing process and cannot properly be ignored. Where the earlier cases mandated a reversal of the conviction because of improper prosecutorial comments, that was within a framework of the older statute; our new procedure merely requires a reversal of the sentence and a remand for a new sentencing trial only.

circumstances. Since we have remanded this cause to the trial court for a new sentencing proceeding, this issue may well arise again, and we therefore address it.

In its written findings of fact, the trial court found in aggravation that the appellant was serving a sentence for a Tennessee forgery conviction at the time of the murder; that the murder was committed during the course of an attempted robbery; and that the crime was especially heinous, atrocious and cruel. The court found nothing in mitigation; specifically, the court found that appellant had a significant history of criminal activity and his age of twenty-five was not a mitigating factor.

[8, 9] The trial court correctly found that appellant was under sentence of imprisonment due to the Tennessee forgery conviction and appellant has not disputed that aggravating circumstance. He does dispute the other two factors. Since the murder was committed during the course of an attempted robbery, appellant claims that this creates a presumption for the imposition of the death penalty for all persons who commit first-degree felony murder in contrast to those who murder by premeditated design. This argument is without merit and has been disposed of already by this Court in *White v. State*, 403 So.2d 331 (Fla.1981). In any event, with sufficient evidence to support a conviction for premeditated murder in the instant case, the argument becomes academic. Finally, appellant disputes the trial court's findings that the murder was heinous, atrocious and cruel. We agree with appellant that this killing does not fall within that category of murders which the legislature has denominated as *especially* heinous, atrocious and cruel. § 921.141(5)(h), Fla.Stat. (1979). As we stated in *State v. Dixon*, 283 So.2d 1, 9 (Fla.1973), *cert. denied*, 416 U.S. 943, 94 S.Ct. 1951, 40 L.Ed.2d 295 (1974), "[w]hat is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies—the conscienceless or pitiless crime which is unnecessarily torturous to the victim." The criminal act that ultimately caused death was a single sudden shot from a shotgun. The fact that the victim lived for a couple of hours in undoubted pain and knew that he was facing imminent death, horrible as this prospect may have been, does not set this senseless murder apart from the norm of capital felonies.

[10–12] Appellant argues that the trial court erred by not finding mitigating factors present. More specifically, appellant claims that he lacked a significant history of prior criminal activity. He claims that the dispositive word is "significant" and that one conviction for forgery and one prison escape do not rise to the level envisioned by the legislature as significant. The trial court noted in his findings on this issue that:

> The Court finds the Defendant does have a significant history of criminal activity. He was convicted of the felony of forgery. Secondly, he was an escapee at the time of the offense. The Court did not take into consideration either the Texas murder or the Florida aggravated assault. Both of these offenses occurred after January 14, 1979. Additionally, the Court did not allow evidence of these later two offenses to go to the jury during the sentencing phase. The Court on one hand fears that events occurring after the offense may not be legally relevant. On the other hand the Court feels that these subsequent events are in fact relevant to the Defendant's rehabilitation potential and should be considered by the Court and jury. The benefit of the doubt was given to the Defendant and these events were not considered by the Court, nor submitted to the jury.

We make two comments on the trial court's findings relative to this mitigating factor. First, it is within the trial court's province to decide whether a mitigating circumstance is proven and the weight to be given it. *Riley v. State*, 413 So.2d 1173 (Fla.), *cert. denied*, —— U.S. ——, 103 S.Ct. 317, 74 L.Ed.2d 294 (1982); *Smith v. State*, 407 So.2d 894 (Fla.1981), *cert. denied*, 456 U.S.

984, 102 S.Ct. 2260, 72 L.Ed.2d 864 (1982). We cannot say that it was error for the trial court to find a forgery conviction and a prison escape to be a significant history of criminal activity. Second, we note that the trial court gave the benefit of the "doubt" to appellant by not considering appellant's Texas conviction for the murder of George Overton and appellant's Florida conviction for an aggravated assault which had occurred in the Volusia County jail while appellant was awaiting the instant trial. We think the law is clear on this point and that there need be no doubt. We have held that "in determining the existence or absence of the mitigating circumstance of no significant prior criminal activity, 'prior' means prior to the sentencing of the defendant and does not mean prior to the commission of the murder for which he is being sentenced." *Ruffin v. State*, 397 So.2d 277, 283 (Fla.), *cert. denied*, 454 U.S. 882, 102 S.Ct. 368, 70 L.Ed.2d 194 (1981). At resentencing, the trial court may thus consider the Texas murder conviction and the Florida aggravated assault conviction.

[13] Appellant further argues that the trial court should have found as mitigation that appellant was only an accomplice to the triggerman Overton. Appellant's admissions to the Poteets and Kuykendall that he himself shot the victim belie this argument.

[14] Appellant's final issue for review relates to the sentence for the firearms offense. He claims that according to *State v. Hegstrom*, 401 So.2d 1343 (Fla.1981), he may be convicted of both murder and the firearms offense but that separate sentences are proscribed and hence the three year sentence for the firearms charge must be vacated. We disagree. *Hegstrom* was a felony-murder case; the instant murder conviction, as we have held above, may properly be based on premeditation. As such, the firearms offense is not a lesser-included offense of premeditated murder. *See Borges v. State*, 415 So.2d 1265 (Fla. 1982). Separate sentences are thus not proscribed.

In summary, Robert A. Teffeteller's conviction of murder in the first-degree is affirmed. His sentence of three years for the use of a firearm in the commission of a felony is also upheld. Appellant's death sentence, however, is vacated and remanded to the trial court for a new sentencing proceeding with a jury.

It is so ordered.

ALDERMAN, C.J., and ADKINS, OVERTON, McDONALD, EHRLICH and SHAW, JJ., concur.

BOYD, J., concurs in part and dissents in part with an opinion.

BOYD, Justice, concurring in part and dissenting in part.

I concur in the judgment affirming appellant's conviction but dissent to the order vacating the death sentence and awarding a new sentencing trial. The question of whether the prosecutor's comments in closing argument at the sentencing proceeding were improper, and the separate question of whether they were prejudicial, must be determined in the context of the facts and circumstances of the crimes as shown by the evidence. *Gibson v. State*, 351 So.2d 948 (Fla.1977), *cert. denied*, 435 U.S. 1004, 98 S.Ct. 1660, 56 L.Ed.2d 93 (1978). If the facts shown by the evidence are shocking, prosecutorial comments thereon are likely to be somewhat intense and such fair comment is permissible. *Darden v. State*, 329 So.2d 287 (Fla.1976), *cert. dismissed*, 430 U.S. 704, 97 S.Ct. 1671, 51 L.Ed.2d 751 (1977).

As the majority opinion recognizes, the cases cited therein pertaining to improper inflammatory argument were decided under the old capital felony sentencing proceedings. Under prior law in Florida, a conviction of a capital crime resulted in an automatic sentence of death unless the jury included with its verdict of guilt a recommendation of mercy. Such a recommendation of mercy was binding on the trial judge and resulted in a sentence of life imprisonment. The final arguments of counsel were directed both to the matter of guilt or innocence and to the matter of death or life

imprisonment. Thus excessive comments by the prosecutor directed to one of the two matters to be determined by the jury were capable of improperly influencing the jury on the other matter. The result of improper comment was therefore often a finding of prejudice.

Under the current capital felony sentencing law, the trial proceeds in two stages, with a guilt phase followed by a sentencing proceeding. Thus the jury does not hear evidence and argument directed specifically at the question of sentencing until the defendant's guilt of a capital felony has already been determined. There is thus no danger that a prosecutor's inflammatory remarks on the question of sentence will improperly influence the jury on the question of guilt or innocence.

Another major difference between the old and the new sentencing procedures is of course that under current law the jury's sentencing determination is advisory only. The trial judge imposes the sentence. Part of the judge's function is to guard against any improper emotional impact on the determination of the sentence and to assure that the sentence imposed is based upon objective evaluation of the crime and the offender.

Even under the old sentencing procedure, prosecutorial reference to the possibility of parole with a life sentence was held not prejudicial because the institution of parole is a matter of such common knowledge. *Paramore v. State*, 229 So.2d 855 (Fla.1969), *vacated on other grounds*, 408 U.S. 935, 92 S.Ct. 2857, 33 L.Ed.2d 751 (1972). There was a presumption that the trial judge was capable of controlling arguments of counsel and would keep them within proper bounds. *Id.*

Under the current sentencing law, we have rejected claims of improper comment at the sentencing phase where the comments did not appear to have prejudicially affected the final sentencing determination by the judge. *Breedlove v. State*, 413 So.2d 1 (Fla.), *cert. denied*, —— U.S. ——, 103 S.Ct. 184, 74 L.Ed.2d 149 (1982).

Although the likelihood that an offender will commit violent crimes in the future is not a statutory aggravating circumstance, we have recognized that the statutory circumstances, examined in their entirety, seem to point to such propensity as a relevant matter in the sentencing determination.

> [W]e believe the purpose for considering aggravating and mitigating circumstances is to engage in a character analysis of the defendant to ascertain whether the ultimate penalty is called for in his or her particular case. Propensity to commit violent crimes surely must be a valid consideration for the jury and the judge. It is a matter that can contribute to decisions as to sentence which will lead to uniform treatment....

Elledge v. State, 346 So.2d 998, 1001 (Fla. 1977).

Because I believe that the prosecutorial comments in this case were not improper, and that if they did exceed the bounds of propriety they had no prejudicial impact on the final sentencing determination, I dissent from the judgment granting a new sentencing trial.

IN re RULES OF CRIMINAL PROCEDURE (SENTENCING GUIDELINES).

No. 63962.

Supreme Court of Florida.

Sept. 8, 1983.

Original Proceeding—Florida Rules of Criminal Procedure.

Robert Wesley, Staff Counsel, Tallahassee, for Sentencing Guidelines Com'n, petitioner.

81-66

IN THE SUPREME COURT OF FLORIDA

ROBERT ALLAN TEFFETELLER, Appellant,	)	
vs.	)	CASE NO. 60,337
STATE OF FLORIDA, Appellee.	)	

MOTION FOR REHEARING

Appellant, by and through his undersigned counsel, and pursuant to Rule 9.330 Fla.R.App.P., respectfully requests that this Honorable Court grant this motion for rehearing of its opinion rendered on August 25, 1983, in the above-styled cause. As grounds for this motion, Appellant states that this Honorable Court has overlooked and misapprehended certain points of law and fact which will be stated with particularity in the body of this motion.

In Point II of Appellant's Initial Brief, he raised as error the trial court's admission of certain hearsay evidence under the dying declaration exception. In dealing with this issue, this Court held that it was not clearly erroneous for the trial court to admit the dying declaration in the instant case. In so ruling, this Court completely overlooked the second prong of Appellant's argument on this issue dealing with the inapplicability of the rationale for this hearsay exception in the instant case. While the argument was a novel one, Appellant felt that it had merit.

In ruling adversely to Appellant's case on many of the issues dealt with in the opinion, this Court relied upon its finding that the conviction could be sustained under a premeditation theory in addition to a felony-murder theory. In so ruling, this Court overlooked several facts below. Appellant was originally charged by indictment with both premeditated and felony-murder. Prior to trial, the court ruled that the state must elect between these two counts. The state elected to proceed with the premeditated murder charge so that they could proceed

under either theory at trial. However, at trial the evidence and the state's argument clearly emphasized the theory of felony-murder. The state never established beyond a reasonable doubt that Appellant was the actual trigger-man. In closing argument to the jury, the prosecutor gave only lip service to the theory of premeditation, yet went into great detail in defining felony-murder and its application to the instant facts.

The Court overlooked the case of Franklin v. State, 403 So.2d 975 (Fla. 1981). In that case, this Court did not examine whether the evidence showed that the conviction could be sustained under either a felony-murder or a premeditation theory. Rather, the Court stated that the primary thrust of the state's case was felony-murder. The instant case is analogous in every respect to that of Franklin, supra. This Court overlooked this point of law.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion for rehearing and order a new trial.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida
32014-6183
Phone: (904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, at his office located at 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014, and a copy mailed to Mr. Robert Allan Teffeteller, Inmate No. 075785, Florida State Prison, P.O. Box 747, Starke, Florida 32091, this 8th day of September, 1983.

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER

Supreme Court of Florida

TUESDAY, NOVEMBER 1, 1983

RECEIVED
NOV 4 1983
PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

ROBERT ALAN TEFFETELLER, **

Appellant, **

**

vs. **

**

STATE OF FLORIDA, **

Appellee. **

** ** ** ** ** ** ** ** ** **

CASE NO. 60,337

Circuit Court Case No.
(Volusia County) 79-931-BB

Appellant's Motion for Rehearing is denied.

Appellee's Motion for Clarification is granted, and the last sentence of the first paragraph on page ten (10) of the opinion filed August 25, 1983, is revised to read as follows:

> "At resentencing, the trial court may thus consider the Texas murder conviction and the Florida aggravated assault conviction."

True Copy

TEST:

Sid J. White
Clerk Supreme Court.

JB

cc: Hon. V. Y. Smith, Clerk
Hon. S. James Foxman, Judge
Christopher S. Quarles, Esquire
Richard B. Martell, Esquire

81-64
113

Mandate
Supreme Court of Florida

To the Honorable, the Judges of the Circuit Court in and for Volusia County, Florida

WHEREAS, in that certain cause filed in this Court styled:

ROBERT ALAN TEFFETELLER vs. STATE OF FLORIDA

RECEIVED
DEC 12 1983
PUBLIC DEFENDER'S OFFICE
7th Cir. Ct. Fla.

Case No. 60,337

Your Case No. 79-931-BB

The attached opinion was rendered on August 25, 1983.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS the Honorable James E. Alderman

Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 9th day of December, 1983.

Sid J. White

Clerk of the Supreme Court of Florida

CHAPTER 921

SENTENCE

921.09 Fees of physicians who determine sanity at time of sentence.
921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.
921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.
921.15 Stay of execution of sentence to fine; bond and proceedings.
921.16 When sentences to be concurrent and when consecutive.
921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.
921.18 Sentence for indeterminate period for noncapital felony.
921.185 Sentence; restitution a mitigation in certain crimes.
921.20 Classification summary; Parole and Probation Commission.
921.21 Progress reports to Parole and Probation Commission.
921.22 Determination of exact period of imprisonment by Parole and Probation Commission.
921.231 Presentence investigation reports.
921.241 Felony judgments; fingerprints required in record.
921.242 Subsequent offenses under chapter 796; method of proof applicable.

921.09 Fees of physicians who determine sanity at time of sentence.—The court shall allow reasonable fees to physicians appointed by the court to determine the mental condition of a defendant who has alleged insanity as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 255, ch. 19554, 1939; CGL 1940 Supp. 8663(264); s. 121, ch. 70-339.

921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.—The court shall allow reasonable fees to the physicians appointed to examine a defendant who has alleged her pregnancy as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

History.—s. 258, ch. 19554, 1939; CGL 1940 Supp. 8663(267); s. 122, ch. 70-339.

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon

the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8463(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353.

Note.—Former s. 919.23.

921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.—

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced to:

(a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or

(b) Submit a written statement under oath to the office of the state attorney, which shall be filed with the sentencing court.

(2) The state attorney or any assistant state attorney shall advise all victims that statements, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(3) The court may refuse to accept a negotiated plea and order the defendant to stand trial.

History.—ss. 9, 10, ch. 76-274.

921.15 Stay of execution of sentence to fine; bond and proceedings.—

(1) When a defendant is sentenced to pay a fine, he shall have the right to give bail for payment of the fine and the costs of prosecution. The bond shall be executed by the defendant and two sureties approved by the sheriff or the officer charged with execution of the judgment.

(2) The bond shall be made payable in 90 days to the Governor and his successors in office.

(3) If the bond is not paid at the expiration of 90 days, the sheriff or the officer charged with execution of the judgment shall indorse the default on the bond and file it with the clerk of the court in which the judgment was rendered. The clerk shall issue an execution as if there had been a judgment at law on the bond, and the same proceedings shall be followed as in other executions. After default of the bond, the convicted person may be proceeded against as if bond had not been given.

History.—s. 260a, ch. 19554, 1939; CGL 8426, 8427; CGL 1940 Supp. 8463(270); s. 123, ch. 70-339.

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall

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BOOK PAGE

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA.

CASE NO. 79-931-BB

STATE OF FLORIDA

vs.

ROBERT ALLAN TEFFETELLER,

Defendant.

_____/

MAR 7 11 57 AM '81

018421

JUDGMENT AND SENTENCE

You, ROBERT ALLAN TEFFETELLER, being now before the Court attended by your attorney, HOWARD B. PEARL, and having had a fair trial by the jury of your countrymen and having been found Guilty of the crime of MURDER IN THE FIRST DEGREE, with a recommendation of death by the jury in a separate proceedings to consider the penalty, the Court now adjudges you to be Guilty of that offense. What have you to say why the sentence of the law should not be pronounced upon you? Saying nothing, it is the sentence of the law and such is the Judgment of the Court that you, ROBERT ALLAN TEFFETELLER, be delivered by the Sheriff of Volusia County, Florida, with a copy of this sentence forthwith, to the proper officer of the Department of Corrections, and by him safely kept until by warrant of the Governor of the State of Florida, you, ROBERT ALLAN TEFFETELLER, be electrocuted until you are dead. May God have mercy on your soul. (see below)

The Court's findings in support of the death penalty are filed concurrently herewith.

You are hereby notified of your right to appeal the finding of guilt and/or sentence within 30 days from the date hereof.

If you are an indigent person counsel will be appointed for you.

DONE AND ORDERED in Open Court at DeLand, Volusia County, Florida, this 18 day of October, 1980.

Received in open Court
Seventh Judicial Circuit
Volusia County, Florida

OCT 18 1980

S. JAMES FOXMAN, CIRCUIT JUDGE

By _____
Deputy Clerk

As to Count I, you are also adjudged guilty on the count of ... of a felony, and sentenced to ... 3 years therefore, said sentence to run ... with ... be served consecutive to ... to count I. SJF

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA
COUNTY, FLORIDA.

SPRING TERM, 197 80
CASE NO. 79-931-BB

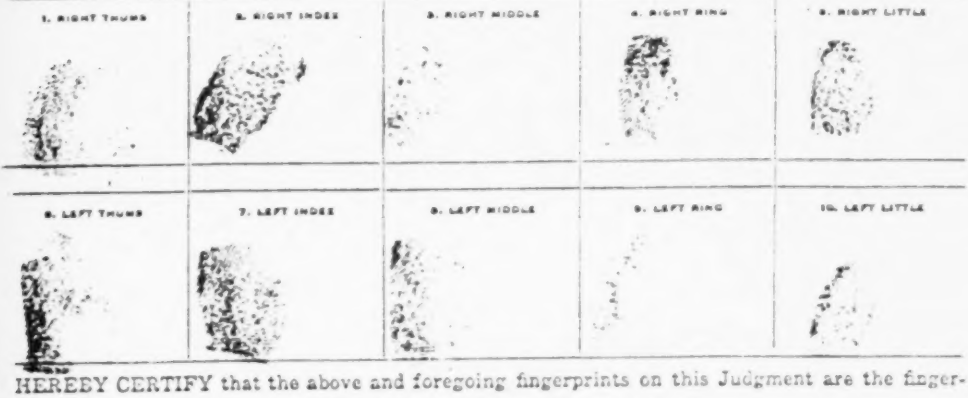
THE STATE OF FLORIDA

VS.

ROBERT ALLAN TEFFETELLER,

Defendant.

APPENDAGE TO JUDGMENT AND SENTENCE



I HEREBY CERTIFY that the above and foregoing fingerprints on this Judgment are the fingerprints of the Defendant ROBERT ALLAN TEFFETELLER and that they were placed thereon by said Defendant in my presence in Open Court, this 8 day of October 19 80

Prints taken by;

Deputy Sheriff

S. JAMES FOXMAN
Circuit Judge

Filed in Open Court and Recorded in Circuit Court Minute Book No. _____, Page _____, this 18 day of Oct, 1980.

V. Y. SMITH
Clerk of Circuit Court,
Seventh Judicial Circuit,
Volusia County, Florida.

By _____,
Deputy Clerk

A 17

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA.

CASE NO. 79-931-BB

STATE OF FLORIDA §

vs. §

ROBERT A. TEFFETELLER, §

Defendant. §

FILED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT VOLUSIA COUNTY, FLORIDA
OCT 3 1980
V. Y. SMITH, CLERK

SECOND SUPPLEMENTAL MOTION TO SUPPRESS

The defendant, pursuant to the provisions of Fla.R. Crim.P.3.190(h)&(i), moves the Court for the entry of an Order suppressing certain evidence illegally seized and certain statements or admissions of the defendant illegally obtained. In support hereof, defendant would show:

1. The properties and admissions soupht to be suppressed are as follows:

a. Property seized from the automobile of the defendant by the police department of Clayton County, Georgia on February 25, 1979.

b. Property seized from the automobile of the defendant by Florida officers in Clayton County, Georgia on or about February 27, 1979.

c. Oral or taped statements or admissions obtained from the defendant by Florida officers in Clayton County, Georgia on or about February 27, 1979.

d. Oral statement or admission of the defendant obtained by Deputy Sheriff Otis A. Montgomery, Harrison County Sheriff's Department, at Marshall, Texas March 1, 1979.

e. Oral statements or admissions obtained from the defendant by Criminal District Attorney Sam Baxter, Texas Ranger Glenn Elliott and Harrison County (Texas) Sheriff Bill Oldham at Marshall, Texas on March 21, 1979.

f. Taped statements or admissions by the defendant to Florida officers Eaton and Legg at Tyler, Texas on March 28, 1979.

2. As grounds for the suppression, defendant alleges:

a. The property was seized without warrant, valid consent, probable cause or exigent circumstances.

b. The statements or admissions were obtained from the defendant by improper inducement or at a time when, due to prior illegal acts of investigating officers, the defendant believed that his rights to remain silent had been vitiated and that he could not effectively assert them.

3. A general statement of the facts upon which this motion is based is as follows:

a. On February 25, 1979, the defendant was arrested in Clayton County, Georgia, by local police, upon a fugitive warrant charging him with the crime of murder in the State of Texas.

b. At the time of the arrest, two other persons were passengers in his automobile, one of whom was also sought upon the fugitive warrant, but no charges were pending against the second passenger, nor did the arresting officer have any cause to believe that the said passenger had committed an offense. Nevertheless, the police took all of the occupants of the car into custody, two of them upon the fugitive warrants and the third for questioning.

c. The police thereupon seized and impounded the defendant's car, for use as evidence in the Texas murder case. Subsequent thereto, the police conducted an "inventory" of the contents of the automobile and in the course of listing the contents of the vehicle, located and itemized certain shotgun shells which will be offered in evidence by the State in this cause. The police have explained "inventory" as a proceeding conducted as a matter of policy to protect the police department from claims of loss by vehicle owners, and have asserted that it was not a search.

d. On or about February 27, 1979, Florida officers Eaton and Legg visited the defendant at Clayton County, Georgia, while he was in jail being held pursuant to the Texas warrant. At that time, the officers obtained from the defendant a consent to search his vehicle and also obtained from him certain statements or admissions concerning the Florida case. At that time, the defendant believed that the search by the Georgia officers, conducted under the guise of an "inventory", and the evidence revealed thereby, had so vitiated his rights against unreasonable search and seizure and to the due process of law that he could no longer effectively assert his rights during the investigation. For that reason, and in the mistaken but sincere belief that his rights and defenses had been rendered nugatory, gave his consent to search and made the statements or admissions, whereas, if he had known or been advised that the initial "inventory" was in fact an illegal search he would not have given his consent or made any statements or admissions. During his confinement in Clayton County, Georgia, the defendant was not offered, and did not receive, the advice or assistance of counsel in connection with the assertion of his rights against self-incrimination and unreasonable searches and seizures.

e. On or about February 27, 1979, the defendant was transported from Georgia to Texas, and lodged in the Harrison County Jail at Marshall, Texas.

f. On March 1, 1979, the defendant was interviewed by Harrison County Deputy Sheriff Otis A. Montgomery, and thereupon made an oral statement or admission concerning the Florida case. At that time and place, the defendant remained under the impression that his right had been vitiated by the initial illegal search and seizure and further, was informed and did believe that the statement he made was not admissible in evidence under Texas law. Defendant's understanding of the law was that the statement would not be admissible in any Court, in Texas or Florida, whereas in fact, such statement would be admissible in Florida but not in

Texas. Nevertheless, defendant was induced to make the statement upon the strength of an apparent assurance that the statement would not be admissible in evidence against him.

g. On March 21, 1979, the defendant was interviewed in Marshall, Texas, by Criminal District Attorney Sam Baxter, Texas Ranger Glenn Elliott and Harrison County Sheriff Bill Oldham, at which time he made oral statements or admissions concerning the Florida case. At that time and place, the defendant continued to believe that his right to remain silent had been vitiated by the original, illegal search and seizure. Further, he was advised by Mr. Baxter, an experienced attorney, that his admission would not be admissible in evidence under Texas law. The defendant misunderstood that advice, believing that his statement or admissions would not be admissible in either Texas or Florida, and on the basis of that apparent assurance, he was induced to make statements or admissions which he otherwise would not have made.

h. On or about March 21, 1979, the defendant was sentenced to a term of imprisonment in Texas, and was transported to a facility of the Texas Department of Corrections to begin serving his sentence.

i. On or about March 28, 1979, the defendant was removed from the institution, located at Palestine, Texas and transported by Texas Ranger Glenn Elliott to Tyler, Texas, where he was interviewed by Florida officers Eaton and Legg. Also present was Texas Polygraph Examiner Marvin T. McLeRoy, who was present at the suggestion of the officers to conduct a polygraph examination of the defendant. At that time and place, the defendant made statements or admissions to the Florida officers which were recorded on tape. Defendant contends that at that time and place, he remained under the impression and belief that his right to remain silent had been vitiated by the original, illegal search and seizure by the Georgia police, and further, that the interview was conducted in furtherance of, or as a part of, a polygraph examination. In fact, however, the said examination was not conducted, and the polygraph examiner was present only for the purpose of misleading the defendant

and inducing him to speak freely in the presence of Florida officers. In addition thereto, defendant remained under the impression and belief that his statements or admissions were not admissible in evidence because of the advice previously given him by the Texas officials.

4. It is the intention of the State to offer in evidence the objects and the statements or admissions of the defendant at the trial of this cause. It is the contention of the defendant that the same were obtained in violation of the rights of the defendant against self-incrimination, against unreasonable searches and seizures and to the due process of law and the equal protection of the laws, guaranteed him by the Constitutions of the State of Florida and the United States of America.

WHEREFORE, defendant prays for the entry of an Order in accordance with the tenor of this motion.

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BY: H B Pearl
HOWARD B. PEARL
ASSISTANT PUBLIC DEFENDER
125 East Orange Avenue, Room 300
Daytona Beach, FL 32014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by delivery/mail this 21 day of October, 1980, to: John W. Watson, III, Assistant State Attorney, 125 East Orange Avenue, Daytona Beach, FL 32014.

H B Pearl
Attorney

arises. That is only to the matter of sequestration.

As to the second supplemental motion to suppress, the Court has carefully considered, read the deposition of Ranger Elliott, District Attorney Baxter, Investigators Legg and Eaton, I have heard the live testimony of the Defendant, read the Defendant's testimony at the first suppression hearing, have received other testimony this morning I believe from Ranger Elliott and from Officer Eaton. The Court has had an ample opportunity during the course of the pretrial hearings and the jury selection process to observe the Defendant's demeanor. The Court finds that the Defendant is extremely alert, very intelligent and very aware. The Court specifically notes that the Defendant has, during the last several days, picked up matters that both Counsel and the Court have missed. Defendant is very aware of what is happening. The Court finds the record is replete with situations where the Defendant has not told the truth. He attempts to manipulate evidence. He says what he feels will benefit him most. The Court does not accept his testimony.

I find that the Georgia inventory search was lawful. I find that the search of the car by Georgia authorities and Ormond Beach authorities to be lawful.

They do not violate any rights of the Defendant. I find no need to let any of the Defendant's friends drive away a car as an alternative to impoundment. The car itself was evidence and the reasons for an inventory search were no less had it not been evidence.

I find District Attorney Baxter distinctly told the Defendant he did not know what Florida law was regarding oral statements. The Defendant was not misled.

I believe the testimony of the various law enforcement officers regarding the voluntariness of the Defendant's statements. I find all the Defendant's statements were made knowingly, freely and intelligently.

The motion to suppress is denied.

Mr. Watson, we will take ten minutes. We will go out and start talking to the jury.

MR. PEARL: Your Honor, do you plan to reduce those orders to writing?

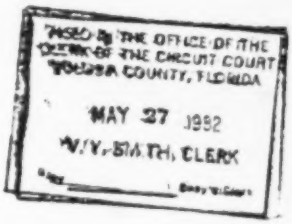
THE COURT: No, sir. That's it.

MR. WATSON: Your Honor, we will be beginning with initial instructions and opening statements in ten minutes. Is that correct?

THE COURT: Yes. We will let the remaining

IN ..E CIRCUIT COURT, SEVENTH . DICIAL CIRCUIT
OF FLORIDA, IN AND FOR VOLUSIA COUNTY
CASE NO. 79-931-BB

STATE OF FLORIDA)
)
VS.)
)
ROBERT A. TEFFETELLER,)
)
Defendant.)



Volusia County Courthouse Annex
Daytona Beach, Florida
March 29, 1982
9:00 A.M.

TRANSCRIPT OP EXCERPTS

OF TAPE

APPEARANCES: JOHN W. WATSON, ESQUIRE
Assistant State Attorney
on behalf of the State of Florida

HOWARD PEARL, ESQUIRE
Assistant Public Defender
for Defendant

ALFRED LEGG, DETECTIVE
Ormond Beach Police Department

JUNE MARHEFKA
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida
Registered Professional Reporter

WHEREUPON the following proceedings were had:

DETECTIVE LEGG:

Q '79, will be taking place in the Department of Public Safety in Tyler, Texas.

Your correct name is?

A Robert Teffeteller. Robert Allen.

Q T-e double f-e-t-e-l-l-e-r?

A Right.

Q You are a white male?

A Right.

Q Your date of birth?

A 9/13/53.

Q 9/13 of '53.

This interview is concerning a homicide investigation that we are conducting in the State of Florida which occurred on January 14, 1979 in the early evening hours in the city limits of Ormond Beach, Florida.

We both identified ourselves as law officers from the State of Florida. Is that correct?

A Yes, sir.

Q And you know Mr. McLeroy.

AGENT McLEROY: McLeroy.

DETECTIVE LEGG:

Q McLeroy?

A Yes, sir.

Q From the state of Texas. He's also present in this

interview. Is that correct?

A Yes, sir.

Q And you do know for a fact that this is the 28th day of March, 1979, Wednesday?

A Yes, sir.

Q Around the hour of 8:45 p.m.

What I'm about to read you is a statement of your rights.

Before you answer any questions or make any statement, you are entitled to and must understand your rights as a citizen. You have the right to remain silent and not testify. If you do testify or make statements, anything you say could be used against you in a Court of Law in the event criminal or other proceedings are instituted.

You have a right to consult with a lawyer before you answer any questions or make any statements.

You further have the right to have an attorney of your choice present during the time you are questioned.

If you desire an attorney and cannot afford one, an attorney will be appointed to advise you prior to any questioning.

If you answer questions or make any statements without consulting a lawyer or without having a lawyer present during questioning, you will still have the absolute right to stop answering questions or making any statement

until you consult with a lawyer or have a lawyer present during further questioning.

Is there any part of those five paragraphs that you do not understand?

Next part is acknowledgment and waiver of rights.

The above statement of my rights has been read and explained to me and I fully understand what my rights are. I'm ready and willing to answer questions or to make a statement without first consulting with a lawyer or without having a lawyer present during questioning.

In waiving my rights to remain silent, I wish to state that no promises or threats have been made to me and no persuasion or coercion of any kind has been used against me.

Do you understand that?

A Yes, sir.

Q Is there any part of it you do not understand?

A No, sir.

Q Are you going to sign stating the fact that you have been read the above two paragraphs?

A Yes, sir.

(Brief pause)

Q We interviewed you back in February in Jonesboro County and you made a statement at that time.

So to eliminate the facts of you traveling after

you got out of Tennessee and departed there and eliminate the part of going into California and Texas and your first trip down to Florida is what we want to deal with.

The first time that you arrived in the state of Florida, the very first time, when was it?

* * *

Q Either the first or the second. Is that correct?

A Right.

Q And you were driving what type of vehicle?

A 1972 Ford Torino blue over blue.

Q Light blue?

A Light blue bottom and dark blue top.

Q What license did you have attached or affixed to the vehicle, from what state?

A I believe it was Tennessee.

Q Whose tag did they belong to?

A Tennessee tag belonged to my father's pickup truck.

Q Did you have any other license tags in your possession at that time in your vehicle?

A Yes, sir. There was a Maine -- Maine plate.

Q Any other ones? Did you have a Michigan tag?

A No.

Q Georgia tag?

A There was a Georgia tag later, but not at that time,

no.

Q Who else was present with you when you entered Florida for the very first time?

A George Overton.

* * *

Q Did you enter the State with someone following you, any females?

A Well, they followed me -- He followed me. It was like we were more or less traveling together, yes, sir.

Q Did you stay with them?

A Yes, sir.

Q When you entered Daytona Beach, Florida?

A Yes, sir. We were not in the same motel room all the time. We were registered in different rooms (inaudible).

Q Do you know the name of the females?

A Judy Taylor and her sister. I -- I believe her name was Angel.

Q Do you know where they're from?

A Yes, sir, Columbus, Ohio.

Q What type of vehicle did they drive?

A '78 Thunderbird.

Q Color?

A White, red vinyl top.

Q Did you sometimes drive it also while you were in Daytona?

A Yes, sir, I did.

Q What motel did you stay at when you first arrived?

A Holiday Inn.

* * *

Q -- when you took your vehicle to Bud Lawrence Ford for repairs?

A Yes, sir.

Q And this is where you met Becky Hunter?

A Yes, sir.

Q When you first dropped your car there or was it the next day? First day or second day?

A I saw Becky the first day. We didn't talk until the second day.

Q Somebody's getting some coffee.

(Brief pause.)

Q Did you meet -- or did you leave the State after you first met Becky? Did you ever leave the state of Florida again after you first -- first acquaintance with Becky at Bud Lawrence Ford?

A Between then and what time?

Q Between the first and seventh did you leave the state of Florida?

A Well (inaudible).

Q You remained in the state of Florida from the first to the seventh?

A Yes, sir, I believe so.

I haven't slept since then.

Q All right.

Did you meet any other girls during this period from the first to the seventh?

A (Inaudible) just (inaudible) other than, you know, some of the girls that worked there at Bud Lawrence through Becky, just to talk to them, you know, at Bud Lawrence. Other than that, you know, I can't (inaudible).

Q From the seventh through the fifteenth did you leave the State?

A Once again, I can't be certain. I don't believe I did. I don't believe I left any more until the --

Q Do you recall being in Ringo, Georgia, at the Days Inn on the ninth of January?

A No.

Q How about on the eighth of January do you recall being in Ringo, Georgia, at the Days Inn?

A No, I don't believe.

Q Do you recall being in McDonald, Georgia, at a truck stop on the ninth of January?

A Oh, let's see. Okay. Let us back up.

I'm not sure of the dates. If you said it's the ninth, it's possible. But when Judy Taylor left Florida I did leave either that same day or the next afternoon I

did leave Florida. So I was gone when I said I did.

The car -- the repairs I had done on the car, quite expensive -- to put it bluntly, I was getting lower on cash --

* * *

Q Did you meet two girls in McDonald, Georgia, at a truck stop and transport them to Florida, Rhonda and Cindy?

A Yes, Mid-Continent Truck Stop.

Q Pardon?

A Mid-Continent Truck Stop (inaudible).

Q And you brought those two girls to Florida?

A Yes, sir.

Q To Daytona Beach?

A Yes, sir.

Q Where did you stay?

A I'm not certain.

The name of the motel that's got that great big orange --

MR. EATON: Mayan?

A Yes, sir.

DETECTIVE LEGG:

Q Did you transport these two girls back to Georgia?

A No, sir, not all the way back. We took them to Union 76 Truck Stop. I believe it was in Jacksonville, Florida, and dropped them off (inaudible).

Q Who was with you?

A George and myself and (inaudible).

Q When you first entered Florida for the very first time on the first or second of January, did you have in your possession any weapons?

A Yes, sir, a shotgun.

Q What kind of a shotgun?

A I believe it was a Mossberg.

Q And the gauge?

A Twelve gauge.

Q Was it your weapon?

A Yes, sir. I had bought it, yes, sir. It was registered where I bought it in my name (inaudible).

I paid for half the gun and George paid for half the gun because he didn't have no ID. (Inaudible).

Q And registered under whose name?

A My name.

Q Where did you buy it from?

A In Tennessee.

Q Whereabouts?

A I don't recall the name of the store. It's somewhere around Knoxville in a department store. I believe it was Sevierville.

Q Pardon?

A I believe Sevierville.

Q Sevierville, Tennessee?

A I believe it was.

Q How do you spell that?

A S-e-v-i or v-i-e-r-v-i-l-l-e.

Q With George there?

This is where you bought the gun?

A Yes.

Q Did you buy any shells?

A Yes, sir.

Q Was it a male clerk or a female clerk?

A Male clerk. George knew the guy. It was someone George went to school with.

Q About how old was he?

A Early twenties.

Q Any other weapon?

A Uh-uh.

Q That was the only weapon that you had the first time you came to Florida on the first or second of January. Is that correct?

A Yes, sir.

Q No other weapon?

A No.

Q Did you visit Broadway Sam's?

A Yes, sir.

Q Did you expose the weapon there?

A Yes, sir, I did.

Q To whom?

A The bartender there. He saw the gun. Murray saw the gun.

Q Do you know Murray's last name?

A No, sir, I don't.

Q You just know him as the bartender?

A I believe Murray (inaudible).

Q Did you visit the Wreck Bar?

A I don't believe we did, the Wreck, that time.

Q Did you go to Mac's Bar?

A Yes.

Q Fannie Parkel's?

A I've been to Fannie Parkel's one time, but I don't know if it was that trip or -- it was one of the trips that we took (inaudible).

Q Did you visit anyone's home other than Becky's?

A On that trip I believe, yes, I'd have to say, yes, I believe we went to Jerry's home, the bartender.

Q Is that in Daytona Beach?

A Yes, sir. I don't know what street. I believe it's Cedar Street (inaudible).

Is it (inaudible).

Coming in on Highway 92, turn left on Nova, way down to the Shamrock Service Station. Just past it, first street past it, left turn down it. Then you go back to the

right (inaudible).

Q Do you know what day it was when you took Rhonda and Cindy to the truck stop, Union 76 Truck Stop in Jacksonville?

A I believe it was approximately the twelfth. Maybe -- Maybe (inaudible).

Q Could it have been later?

A It's possible, but I doubt it.

Q The twelfth was on a Friday.

A Maybe. I believe it was the twelfth. Maybe the thirteenth. Thirteenth at the latest.

Q Did you have the shotgun with you at that time?

A Yes, sir, I'd say I did.

Q In your car?

A I would imagine so, yes.

Q Whereabouts in the car did you always carry your weapon?

A The biggest part of the time the gun was sitting in the front seat on the floorboard up against the front seat.

Q Did you come back to Daytona after you left the girls off at the truck stop?

A Yes, sir.

Q You returned back to where?

A Becky's house.

Q where is that?

A 215 Strawberry Lane.

Q 215?

A 215 and a half.

Q On Sunday, the 14th, 1979, January, let's go through the morning when you first got up, Sunday morning.

A I got up. What time I couldn't say. I cooked breakfast.

Q Before noon?

A I cooked that morning. We ate.

Q Who are we?

A Becky, myself, the baby and George.

Q Okay.

A I believe Becky was going to -- I believe she said she was going -- she was going somewhere.

Q Let's back up.

This is before noon. We're at breakfast now. Let's start at noon and work forward.

A That's right where I'm at.

Q At twelve noon?

A Approximately.

Becky was talking of going out somewhere and George and I were going to go get a drink (inaudible).

We left. At that time the bar wasn't open.

Q About approximately what time was this? Was this

before three o'clock?

A Yes, it was before one o'clock. Becky said the bars didn't open till two.

We were there on up into the afternoon. I don't know what time it was, but I had planned on leaving the next day.

• • •

A What time that was I couldn't say.

Q Was it dark?

A No, it was still day out.

Q It was daylight when you left?

A Yes, sir, and from here out is where the statement differs (inaudible).

Q It was daylight when you departed. Is that correct?

A Yes.

Q You were in your light blue Ford when you departed and you had your shotgun with you. Is that correct?

A Yes, sir.

Q Who was driving the vehicle?

A I was.

Q Where was Becky when you left her?

A At home.

Q What was the conversation prior to you departing with Becky? Had she already gone someplace and returned?

A Yes, she had.

Q Had she gone to her grandmother's or gone to her mother's?

A I can't say for sure she went. Something tells me she didn't, but I believe she -- her mother was trying to convince her to go and Becky was more or less trying to talk her way out of it. And whether she went or not I can't state for sure. I'm not positive (inaudible).

As far as the conversation she and I had, it's too long ago.

Q Where did you tell her that you were going?

A I don't remember. Possibly I told her (inaudible).

Q Did you watch Battlestar Galactica that evening?

A Yes, sir, I'm pretty sure we sat home and watched it after. This is after we returned home, I believe, we watched Battlestar Galactica.

Q You said it was daylight when you left?

A Yes, sir.

Q Do you know that Becky's father and mother were going to church that evening?

A Yes, sir. They always go to church (inaudible).

Q All right.

A Her father's a minister (inaudible).

Q Have you ever been to the church?

A Becky showed me the church, but as far as being -- ever being inside the church, no (inaudible).

Q That's the first time you saw it?

A Yes, sir.

Q All right.

* * *

Q George was present and you were driving and you were in your light blue Ford Torino with the dark top. What license tag did you have on the vehicle at that time?

* * *

Q Okay.

A Once again, I couldn't be certain as to what tag was on it. I believe it was the Tennessee tag, but I couldn't be certain one way or the other.

Q Anybody else in the car with you?

A No, sir, just George and myself.

Q And you were driving. Is that correct?

A Yes.

Q And George was the passenger?

A Yes, sir.

Q The gun was in the front seat or up under close to the front seat right on the floorboard?

A Laying on the floorboard.

Q Any other weapons with you at that time?

A No, sir.

* * *

Q Going into the early evening now, dark?

A Yes, sir, coming up on dark is when we were coming back from Flagler Beach.

Q You were traveling back south?

A Yes, sir.

Q Coming toward the Daytona and Ormond Beach?

A Yes, sir.

Q And you were on A1A?

A Yes, sir.

Q Along the beach route. Is that correct?

A Yes, sir.

Q And then what happened?

A Well, sir, how it all came down is -- I can't say word for word something George said: Look, there's a -- turn here. And he saw a guy running across the street and I turned there, turned down the street.

Q George saw a guy?

A Yes, sir.

Q Run across the street?

A Yes, sir.

Q Was he coming from the beach side?

A Yes, sir, he was coming from the beach side. When I was driving he come off the left and turned right off of A1A and went down -- I turned around and started back up the street. The guy was on the right side of the car, on George's side.

Q What kind of clothes did he have on?

A Man, I don't even recall. It was dark clothes, dark pants.

Q Did he have a hat on, cap?

A I don't -- I don't believe so.

Q (Inaudible).

What color jacket?

A I believe it was a dark color, blue or black. I'm not sure.

Q You're not positive of his dress?

A No, not -- not -- I believe I'd say almost certain. I don't know (inaudible), but, at any rate --

Q Did the guy have any facial hair do you recall?

A I don't -- I don't believe he did.

Q Then what happened? What was the conversation when you saw or George saw this person run across the highway? What was the conversation?

A He told me to turn down through there and he was going to rob the guy.

Q George told you this?

A Yes, sir.

Q Where was the shotgun at this time?

A Still on the floorboard.

Q So then when you were approaching the person, what was the events now that you're coming up onto the person?

A We pulled up, stopped the car, and George called the guy over and stuck the shotgun in his face.

Q Pulled up, stopped the guy. How did you stop the guy?

A George called him over to the side.

Q And the person walked up to the car?

A Yes, sir.

Q Then what was said?

A George -- George then threw the shotgun on him.

Q From the passenger side?

A Yes.

Q Kind of demonstrate how this took place, you being the passenger, just demonstrate how someone would hold the shotgun.

A I believe it was like this. Stock is sitting right here (inaudible).

Q Was it a single barrel gun?

A Yes, sir.

Q Did you say anything to him?

A The exact words was, "Come up -- come up off all your money."

Q Come up off all --

A All your money.

Q Person replied?

A That he didn't have any.

Q Did he ask for his wallet?

A I believe he did then. I don't know. From there on it's (inaudible).

He said something else but I don't know what it was because in the next instant the gun went off. He had been shot.

I was scared all to hell and I got out of there.

Q Did you have your lights on?

A I don't think so.

Q You were the driver. Is that correct?

A Yes.

Q What did you do with the shells from the gun?

A I don't know what happened to it.

Q Was it ejected out into the car?

A I believe George did pump it. I believe he shot twice, so if he pumped it it would have ejected into the car.

Q You don't know if he shot twice?

A I believe he did. I can't say for sure, but I believe he did shoot twice.

Q Did the gentleman say anything when he was shot?

A It seems like I heard him yell, "Oh God, don't."

Q Where was this location?

A All I know is it's just off A1A. I can't say directly where it was. I'm not familiar with that area.

Q Is there a church across the street?

A I don't think so.

I'd say no more than a hundred fifty yards off of A1A.

Q Did you travel toward the beach or away from the beach when you departed?

A Toward the beach (inaudible).

Q When you were traveling this way here, this is north. Okay? Broadway is here. You were traveling here and Daytona is on further south this way. Ormond Beach is before Daytona. You were traveling south now. Is that right?

A Yes.

Q And so the victim crossed your path. Right?

A Yes, sir.

Q You continued south. Is that right?

A No. The victim come up on this street, went down this street.

I went down here and turned around.

Q You came down this way?

A Yes, sir.

Q So you turned and you passed the victim. Is that right?

A Yes, sir.

Q And you went down and turned around. Is that right?

A Yes.

Q And then went back this way?

A Yes, sir.

Q And now the victim is here and you pulled up here to detain the victim. Right?

A Yes, sir.

Q Did you ask directions or what?

A It was just to call him over to the car.

Q Was he walking?

A Yes, sir.

Q He was walking.

You headed toward the beach again?

A Yes, sir.

Q Then what?

A To drive south again.

Q South on A1A?

A Went back to Becky's house.

Q Do you know the route that you traveled?

A No.

Q Across the bridge there on Granada Avenue?

A I don't think so.

Q Did you go on into Daytona across the bridge?

A I believe we did. I believe --

Q You went to Seabreeze?

A Yes, sir. That's the one with the tunnel (in-

audible). I believe we went (inaud..ie).

Q Then you went to Becky's house?

A Yes, sir.

Q You were still driving?

A Yes.

Q What did you do with the gun?

A Left it in the car at Becky's house.

Q Was Becky at home when you got there?

A Yes, sir.

Q Was her parents at home?

A I don't recall.

Q You went over to Becky's house. Is that correct?

A Yes.

Q How was Becky dressed? Was she dressed for bed?

A No, I don't believe so.

Q Was the baby in bed?

A No, sir, the baby was still awake.

Q Do you recall what was on TV?

A No. When we first --

(End of side A.)

DETECTIVE LEGG: Tyler, Texas, with Robert Teffeteller on the 28th of March, '79.

Q You don't recall what was on TV, but you think Battleship was on?

A Battlestar Galactica. I believe we watched it. I

don't know if it was on when we first got into the house or a few minutes later or what.

Q What if I tell you Battlestar Galactica was on early in the evening?

A It wasn't late when we got back. Shouldn't have been (inaudible).

Q The homicide occurred at 9:30 p.m.

A I didn't know it was that late unless it stays light awful late. I don't believe it was that late.

Q Well, that's the time that the body was found, was 9:33 p.m., was when they found the victim.

A I didn't think it was that late. Still light (inaudible).

Q Well, I'm just saying that the time the police report indicates the body was found was 9:33 when someone called the police department in reference to the victim found laying in the front yard.

A I didn't think it was that late (inaudible).

Q Do you recall seeing Becky's parents that evening, mother or father?

A I believe -- I'm not certain, but I believe Becky's mother came over later that night after we got back. I believe Becky's mother came over to check on the baby.

Q Did you sleep at Becky's home that night?

A No, sir.

Q Did you sleep in the car?

A Yes, sir.

Q Do you recall seeing Becky's mother the next morning?

A I'm not sure. I don't think so. One way or the other.

Q Did you talk with her father that morning, this is on Monday, the 15th?

A No, I had a talk with Becky's father. I don't know if it was that morning or what morning it was, but I have had a talk with Becky's father. I can't say for certain it was on Monday.

Q What did you do on the fourteenth after you got up?

A On the fourteenth?

Q I mean on the fifteenth. This is on Monday.

A I believe I took Becky to work and returned.

Q Where was George at?

A I don't believe he was awake when I got back (inaudible).

Q Was the baby there?

A No, sir. We took the baby down to the nursery school.

Q You and Becky?

A Yes, sir.

Q You don't recall seeing her mother that morning?

A I can't say one way or the other. I probably did, but, like I say, it's not clear.

Q When you came back to Becky's, what happened? Did you get George up?

A I believe that I laid back down and went back to sleep (inaudible).

Q Did you go to Broadway Sam's that day?

A I'm not certain. It's a possibility that I did. I'm not certain.

Q Did you depart Florida on that day?

A Yes, sir, I believe that evening was when we left.

Q Daylight?

A (Inaudible). Late in the evening when we left.

Q Did you have the shotgun with you at this time?

A Yes, sir.

Q Just you and George. Is that correct?

A Yes.

* * *

Q You left Florida late evening on the fifteenth?

A Yes, sir.

Q Did you have lunch with Becky in the afternoon before you left?

A I talked to Becky after she got off work (inaudible).

Q Did you talk to her when she got off work?

A Yes, sir. Becky wrote me a check right before I left, a check I never cashed. If you want to see a copy of it, I've got a copy of it. I've still got a copy of the check.

Q How much was the check for?

A Twenty-five dollars.

Q Did Becky know anything about the murder?

A No, sir.

Q Did you hear any newscasts or read in the paper or --

A Becky told us about hearing it in the newscast.

Q Can you tell us what information you heard from Becky?

A I believe she said two people in a blue and a black car shotgunned a guy in Ormond Beach. Exactly how it was worded, I can't say.

Q Any comments made to the fact that you had a vehicle --

A Becky said that if I hadn't been with her, that she would have thought that I did it. She thought evidently that I was with her at the time that it happened.

Q Did you tell her that you were there?

A Tell her that I was at her house?

Q Yes, to confirm the fact.

A I denied having any part of the murder (inaudible).

Q While you were in Daytona beach did you hear from anyone else about the killing? Was a comment made at Broadway Sam's?

A I believe we talked to Jerry some and I believe it came up, but I believe George mentioned (inaudible).

Q Did you kill the pharmacist?

A No, sir, I didn't.

Q Did George kill him?

A Yes, sir, he did.

Q In your presence?

A Yes, sir.

Q Did you know that he was going to kill him?

A No, sir, I did not.

When the man said he was going to rob the guy, the last thing I thought he was going to do was kill him.

* * *

Q You was going to be a part of the robbery. Is that correct?

A I was going to let him rob him (inaudible).

I ain't got no control over what he does.

Q You were driving the automobile.

A Yes, sir, that's true.

Why have him come up mad at me?

* * *

Q Did you see anyone else at the scene of the crime

when you were leaving or arriving?

A No, sir.

Q When you left late evening or early evening, whenever, of the fifteenth --

A Yes, sir.

Q And you go where?

A Back to Tennessee, on up into Ohio. From Tennessee into Ohio.

Q Make a telephone call from Ohio back to Florida?

A Yes, sir, I did.

Q Who did you talk to?

A Talked to Jerry.

Q Talked to Jerry?

A Yes, sir.

Q What was the contents of that conversation?

A I don't remember.

Q You talked to him for eighteen minutes?

A I don't know. Only thing that I can -- I don't remember anything that comes to mind.

Q Did you ask him about the killing?

A No.

Q Did he see any advertisement on the newspaper or on the TV, if anything was cool at this time?

A I didn't mention it.

Q Did Jerry have any knowledge about the killing?

A No.

Q From you directly?

A No.

Q How about George?

A I don't know if George ever told him anything about it or not, but I know I never did. I never told anybody about it.

I talked about it later, afterwards, to Donny Poteet. Said he had shot a guy. Donny and I talked about it. Other than that, I don't believe so.

Q You talked to Donny about the killing?

A Just vague things about it. I wouldn't say I told him any details.

Q You never said that you killed the guy?

A No, sir. I know I didn't say I killed anybody.

Q Killed this guy. I'm not talking about anybody, killed this guy.

* * *

Q Did you tell anyone else other than Danny about the killing of the victim in Florida?

A Other than who? You mean other than Donny?

Q Donny. Right. Donny.

A Well, Danny, Donny's brother, he was with us, with Donny and myself, down in Florida and we talked of it some.

Q You don't think that Danny would have any information?

A Not to have --

Q You didn't directly tell him?

A No. George could have told people something. I don't know if -- George knew Donny. George knew Danny. George knew the whole family up there. George could have talked to anybody.

(The following questions were propounded to the Defendant by Investigator Bud Eaton.)

Q I have one thing I want to go over with you.

As I understand it, you were driving the vehicle south on A1A.

A Yes, sir.

Q George was the one that saw the pedestrian cross in your path, as I understand it.

A Right. I know what I told the ranger that I was the passenger. I told him that. It was one of the spur of the moment things that I --

He come in there talking to me and I forget exactly how the conversation went, something about if -- some way you guys were planning on hanging me one way or the other, then that if I said I was not in the vehicle then you guys were going to try to make me trigger and --

Q I have no knowledge whatsoever of your interview with the ranger. This isn't what I'm concerned with.

What I'm concerned with is you were driving the automobile south on A1A.

A Yes.

Q George was the passenger?

A Yes, sir.

Q The shotgun on the front seat on the floorboard?

A Yes, sir.

Q George was the one that observed the pedestrian cross, the jogger?

A Yes.

Q You made a right-hand turn, went down that street. You passed the jogger and you were driving under the instructions of George. Is that right?

A Yes, sir. George said to turn down there.

Q George told you to turn down there?

A After I turned he said he was going to rob the guy. I wasn't going to stop with the gun on my side.

Q You knew why you were going down that street. Right?

A Yes, sir.

Q It was George's idea. Is that right?

A Yes.

Q But you followed George's instructions, you drove your car down that street. Right?

A Yes.

Q You turned your car around, thus putting the pedestrian on the right-hand side of the car and on George's side.

A Yes.

Q You stopped the car at whose instructions?

A George said stop.

Q George said stop, you stopped?

A Yes.

Q You had knowledge of why you were going to stop.

A Yes, sir.

Q What was that?

A George said he was going to rob him.

Q From that point on you have explained that George was the triggerman.

A Yes.

INVESTIGATOR EATON: That's all I have.

DETECTIVE LEGG: I have no further questions.

(End of side B.)

STATE OF FLORIDA)
)
COUNTY OF VOLUSIA)

I, June Marhefka, do HEREBY CERTIFY that I transcribed to the best of my ability a certain tape identified to me as Exhibit 26 on March 29, 1982 at 9:00 A.M. in the office of Philip J. Chanfrau, Official Court Reporter of Volusia County Annex, Third Floor, Daytona Beach, Florida and that the foregoing 34 pages constitute a true and complete transcript of the said tape to the best of my personal knowledge.

I further certify that I am not an attorney or counsel of any of the parties nor a relative or employee of any attorney or party connected with the action nor financially interested in the action.

WITNESS my hand and official seal in the City of Daytona Beach, County of Volusia, State of Florida this 20 day of May, A.D. 1982.

June Marhefka CSR, RPR

Jude Marhefka
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida
Registered Professional Reporter
Notary Public, State of Florida at Large

My commission expires: 7/10/85.

STATE OF FLORIDA)
)
COUNTY OF VOLUSIA)

CERTIFICATE

I, John W. Watson, Assistant State Attorney, and Howard Pearl, Assistant Public Defender, the prosecutor in behalf of the State of Florida, and the Court appointed Public Defenderin behalf of the defendant, Robert A. Tefteller respectively in the case of State of Florida vs. Robert A. Tefteller, case number 79-931-SB, do hereby certify as follows

That the foregoing 34 pages constitute a true and complete transcript of that certain cassette tape introduced into evidence in said case as Exhibit 26, and played before the jury in said case, and is a true a complete transcript of the questions posed by Detective Al Legg and Investigator Bud Eaton (where they are respectively indicated as asking questions) and the responses and statements of Robert A. Tefteller in response to the questions (where indicated) as said questions, and responses and statements were played before said jury.

That the designations on the transcript an "inaudible" were, in fact, inaudible, and that the designations on the transcript indicated by three asterisks across the page, indicate portions of the tape which were, by stipulation by and between the State of Florida and the defendant respectively, to be deleted from the tape and not played before the jury.

That all portions of the tape which, by stipulation, were to be excised from the tape in playing it to the jury and therefore not played to the jury, were in fact excised from the tape and not played before the jury.

JOHN W. MATSON, III
ASSISTANT STATE ATTORNEY, SEVENTH JUDICIAL CIRCUIT, STATE OF FLORIDA, COUNSEL FOR THE STATE OF FLORIDA

HOWARD PEARL
ASSISTANT PUBLIC DEFENDER, SEVENTH JUDICIAL CIRCUIT, STATE OF FLORIDA, COUNSEL FOR THE DEFENDANT, ROBERT A. TEFFELLER

Signed this 20th day of May A.D. 1982.

MR. WATSON: Your Honor, subject to marking with the exhibit number later, I would then at this time tender that tape into evidence subject to some agreement with regard to whether or not this tape would be submitted to the jury in the jury room that we have previously discussed.

THE COURT: Mr. Pearl?

MR. PEARL: I beg your pardon, Your Honor? I didn't catch all of that.

Would Mr. Watson kindly consent to repeat it?

MR. WATSON: Yes, Your Honor.

We would tender this Exhibit DD -- Is that correct, Mr. Clerk -- into evidence as the next succeeding exhibit number subject to the agreement that that tape will not be sent to the jury room during their deliberations.

MR. PEARL: I agree that if the tape is admitted into evidence, that it shall not be sent into the jury room.

However, I object to the introduction of the tape upon the grounds and reasons heretofore stated in my motions to suppress. The Court has ruled upon those motions, but I wish it known that I want to preserve those objections and further it is subject to an additional agreement that parts of the tape when

played, if it is admitted into evidence, will be deleted or edited by the operator during the playing thereof.

THE COURT: All right.

As far as the objections relating to the motion to suppress, second supplemental motion to suppress, they are noted for the record. You don't have to make them any more so that you don't have the repetition. As far as Appellate purposes, they are noted for the record.

MR. PEARL: There was of course one other predicate which has not yet been laid.

THE COURT: That's right. We are talking about the issue of voluntariness and so forth and my question to Counsel is this while we are out of the jury's hearing: Is that contained within the tape or does the State intend to establish it through this witness?

MR. WATSON: Your Honor, speaking to that point --

MR. PEARL: You mean the Miranda rights. Don't you, Judge?

THE COURT: Yes, the issue of voluntariness which the jury must pass upon also, not just the Court.

MR. WATSON: Right.

Your Honor, after we get -- my intent is to tender

POINT V

THE TRIAL COURT ERRED IN ADMITTING APPELLANT'S STATEMENT OVER DEFENSE OBJECTION IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION.

During the trial, Appellant's taped statement was played to the jury. (S1-34;T930) Additionally, Texas Ranger Glenn Elliott testified as to the content of the appellant's statement made to Texas officials prior to his interview with the Florida officials. (T875-883) These statements were the subject of several motions to suppress filed by the appellant prior to trial. (R80-84,127-131) Numerous hearings were held on these motions prior to each trial. (M51-57;MDS76-118;U2-39;H115-206) Additionally, Appellant objected to introduction of the taped statement played to the jury. (T699) Appellant contends that the trial court committed reversible error in denying appellant's motion to suppress his statements made to law enforcement authorities. Appellant's contention is based upon two distinct and separate grounds.

A. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS STATEMENTS WHERE THE STATE FAILED TO MEET ITS BURDEN IN ESTABLISHING THAT THE STATEMENTS WERE FREELY AND VOLUNTARILY GIVEN.

"The State has a heavy burden of proving with unmistakable clarity that a statement or confession has been freely and voluntarily given before it is admitted against an accused." Cason v. State, 373 So.2d 372, 375 (Fla. 2d DCA 1979).

A trial court must consider the totality of the circumstances surrounding a confession in ruling on the issue of voluntariness. Hampton v. State, 354 So.2d 443 (Fla. 2d DCA 1978).

In Miranda v. Arizona, 384 U. S. 436, 478-479 (1966), the Supreme Court of the United States established the procedural safeguards to be employed prior to the admission into evidence of any statements of an accused made while in police custody:

> [W]e hold that when an individual is taken into cusotdy or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings ahve been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. (emphasis added)

The Supreme Court of the United States has set high standards of proof for the waiver of constitutional rights. Johnson v. Zerbst, 304 U. S. 458, 464 (1938). Such waiver must be knowingly and intelligently made:

> There is insistence here that petitioner waived this constitutional right.... It has been pointed out that "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights and that we "do not presume acquiesence in the loss of fundamental rights." [citations omitted]. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. (emphasis added)

If an interrogation occurs without the benefit of counsel, and a statement is taken, a heavy burden rests on the State to demonstrate that the defendant knowingly and voluntarily relinquished his fundamental rights. Miranda v. Arizona, supra at 475.

The issue of whether a waiver has been knowingly and intelligently made and whether the subsequent confession was voluntarily given will be resolved only upon consideration of the "totality of the circumstances" surrounding the waiver and confession. Greenwald v. Wisconsin, 390 U. S. 519 (1968); Clewis v. Texas, 386 U. S. 707 (1967); Williams v. State, 156 Fla. 300, 22 So.2d 821 (1945).

Among the factors to be considered in determining the voluntariness of a confession and a waiver of rights are "persistent and prolonged interrogation, unlawful detention, and the mental capacity or ignorance of the accused." State v.

Chorpenning, 294 So.2d 54,56 (Fla. 2d DCA 1974). The burden of proving that a confession has been freely and voluntarily given and that the above factors are not present lies upon the State. Reddish v. State, 167 So.2d 858 (Fla. 1964).

For a confession to be considered involuntary, it need not have been induced by physical coercion; psychological coercion will also render the statement inadmissible. Reddish v. State, supra. The Supreme Court of the United States, in Townsend v. Sain, 372 U. S. 293 (1963), held that, for a confession to be voluntary, it must be the product of a rational intellect and a free will, without any physical or psychological pressures. Cf. Blackburn v. Alabama, 361 U. S. 199 (1960).

Appellant contends that the taped statement given to the Florida officials in Texas and the statement testified to by Texas Ranger Glenn Elliott at trial were obtained in violation of Appellant's constitutional rights under both the United States and Florida Constitutions. Amend.IV,V,VI and XIV, U.S. Const.; Art. I s. 9 and 12, Fla. Const.

It is clear from the record that, prior to Appellant's interview with the Texas officials, he was informed of the standard Miranda warnings or at least reminded of a previous reading of those rights. (DB7-8;U23-24;MDS111;T877) However, the Texas officials went on the advise him of the applicable Texas law on oral statements. (MDS112-113;DB9-10) Sam Baxter, a prosecuting attorney in Texas, personally told the appellant that oral confessions were inadmissable under Texas law with a couple of very limited exceptions. Except for the extremely limited res

gestae and fruits of the crime exceptions, a confession must be reduced to writing and signed by the defendant in order to be admissable in Texas. This was in fact a correct statement of the law in Texas. Art. 38.22, Texas Code of Criminal Procedure. The Texas authorities testified that they told the appellant that they were ignorant of the law in Florida on this issue. (DB9-10;H165) The appellant testified that they may indeed have taken this position, but was unsure if this had been communicated to him. (MS35-39)

When Detectives Eaton and Legg arrived at a later date in Texas to interview the appellant, they obtained a written waiver from him. (R167) The Miranda warnings that the Florida authorities read to the appellant were the identical rights recited by the Texas authorities prior to their interview. (T922-925;S3-4)

Appellant contends that the resulting confusion in his own mind as to the applicable law resulted in the coercion of his statements. The appellant testified that, as far as he knew, "the law was the law." (MS35) Throughout the various suppression hearings, Appellant maintained that he was under the impression that oral statements made by him would not be admissable in Florida or elsewhere. (MDS113) The confusion is easy to understand when one realizes that both the Texas and Florida authorities included in their standard warnings the fact that any statement could and would be used against him in a court of law. In their interview with the appellant, the Texas officials' supplemental clarification of Texas law lended this

particular Miranda warning to be essentially void. The advice given Appellant on Texas law looms even larger when one considers the source. The legal advice came from a Texas officer who was both a lawyer and a prosecutor. (DB3-4) Surely, the appellant was not careless in relying upon the advice. Even the writer of this brief gave serious consideration to arguing that Texas law should govern the admissibility of Appellant's statements. It is understandable that the appellant had an honest belief that his oral statements would be inadmissible. It is easy to imagine his expression of disbelief when Ranger Glenn Elliott testified as to the content of Appellant's oral statement of which the appellant was assured would be inadmissible. Although the inducement of the Appellant's statement was not the result of any intentional deception or misrepresentation on the part of law enforcement officers, appellant submits that the effect was the same. Appellant contends that this contributed to the totality of the circumstances which rendered the confession inadmissible.

Another basis for Appellant's motions to suppress was the contention that the statements were fruits of the illegal inventory search of his automobile. (R127-131) Appellant testified that, although he was advised of his rights, he was of the opinion that these rights were not being afforded to him. (MA7) Since his rights were violated as a result of the automobile search, appellant was of the opinion that his right to remain silent was rendered nugatory. This contributed to the totality of the circumstances rendering the statements inadmissible. (See Point VIII)

NO. 79-931-BB

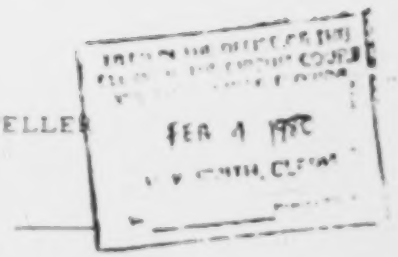
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, STATE OF FLORIDA,

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SEVENTY-NINE

STATE OF FLORIDA

VS.

ROBERT ALLAN TEFFETELLER



APPEARANCES:

For the State: John W. Watson, III
Assistant State Attorney,
Courthouse Annex
Daytona Beach, Florida. 32015

For the Defendant: Howard B. Pearl
Assistant Public Defender,
Courthouse Annex
Daytona Beach, Florida. 32015

DEPOSITION OF SAM BAXTER

ORIGINAL

Answers and deposition of SAM BAXTER, Criminal District Attorney, Marshall, Harrison County, Texas, witness produced on behalf of the Defendant, taken in the above styled and numbered cause on the 17th. day of January, 1980, before Christine Price, a Notary Public and Certified Court Reporter in and for Harrison County, Texas, in the County Courtroom of the Courthouse in Marshall, Harrison County, Texas, pursuant to the agreement hereinafter set forth.

AGREEMENT.

IT IS AGREED by and between the parties hereto, through their respective attorneys of record, that the Defendant may take the deposition of Mr. Sam Baxter in the foregoing entitled and numbered cause beginning at ten o'clock a. m. on the 17th. day of January, 1980, without the service of notice of time of taking said deposition and without the issuance of a commission thereon, said deposition being taken with the same force and effect as though all formalities of law had been complied with.

IT IS FURTHER AGREED that all objections to any question or answer, except objections as to the form of the question, which must be objected to at the time of the taking of the deposition, may be made upon the trial of this cause

with the same force and effect as though this witness were present in person and testifying from the witness stand.

IT IS FURTHER AGREED that the signature of the witness shall be waived, and that all formalities regarding the return of said deposition into court are hereby waived, and the same may be returned by filing with the Clerk of said Court.

SAM BAXTER, Witness above named, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, on his oath deposed and testified as follows:

DIRECT EXAMINATION

MR. PEARL:

Q. Will you please state your name sir?

A. Sam F. Baxter.

Q. In what City and County of Texas do you reside?

A. Marshall, Texas, Harrison County, Texas.

Q. What is your business occupation or profession?

A. Attorney at law, and I am currently the

Criminal District Attorney for the 71st. Judicial District of the State of Texas.

Q. Is that an official position with the State of Texas?

A. Yes, it is.

Q. Were you so employed throughout the year, 1979?

A. Yes.

Q. In the course of your official duties Mr. Baxter, did you have an occasion to see and contact one Robert Teffeteller?

A. Yes, I did.

Q. Did you interview him or participate in any interview of Mr. Teffeteller?

A. Yes, I did.

Q. Can you give me the date and place that that occurred?

A. Yes, that was on March 21st. of last year, 1979, and it occurred in a room on the fourth floor of the Harrison County Courthouse in the Jail area in a room that is used primarily for storage of inmate clothing, blankets, mattresses and supplies for the Jail, it is adjacent to the Jailer's Office, there is a door that separates the Jailer's Office and this particular room.

It is also sometimes used as an interview room for defense attorneys to talk to their clients who might be incarcerated in the Jail.

Q. At that time and place, will you please state the names of the persons present?

A. Mr. Teffeteller was there, and I was there in the room; with us was Mr. Glen Elliott, who is a Texas Ranger, and Mr. Bill Oldham, who is currently the Sheriff of Harrison County, but who at that time was a Captain with the Sheriff's Department, was not the Sheriff.

Q. Did you conduct the interview with Mr. Teffeteller personally, or was it conducted by another in your presence?

A. It was conducted by myself primarily.

Q. Did any one else participate in the interview?

A. Mr. Elliott did, Mr. Oldham did not. Let me back up just one minute, o. k. Sheriff Oldham took office sometime during the early part of 1979, and I believe on this particular day he was not then the Sheriff, but it is possible he could have been appointed a day or two before, so he was a Captain and he became a Sheriff.

Q. Do you happen to know sir, whether Ranger Elliott might have conducted a separate interview

with Mr. Teffeteller at any time?

A. Prior to that time I believe he had not other than Mr. Elliott and Mr. Montgomery had gone to Georgia to pick up Mr. Teffeteller and Mr. Poteet and had transported them back to Texas, and it was the four of them in the car, now what sort of conversation they had then, I don't know.

Q. That was Mr. Montgomery?

A. Yes, Mr. Montgomery and Mr. Elliott. I don't believe that he had talked to him since that time up until the 21st. Mr. Elliott also transported Mr. Teffeteller from one of the Penal Farms near Palestine, a place called Tennessee Colony, to Tyler, Texas, and then transported him back, that was about a week after this conversation.

Q. Do you know whether or not Mr. Elliott conducted an interview then of Mr. Teffeteller at any time subsequent such as at Tyler, Texas?

A. No. At Tyler, Texas, in my presence he did not. At that time I believe Mr. Teffeteller's conversations were with the Investigators from Florida.

Q. Were you present in Tyler, Texas at the

interview that took place between Mr. Teffeteller and the Florida authorities?

A. I was in the building, but I was not present in the room when the interview took place.

Q. Now, on the occasion of March 21, 1979, at Marshall, Texas, in which you conducted the interview, at the outset what, if anything, was said to Mr. Teffeteller concerning his right to speak or remain silent?

A. Mr. Teffeteller was in the Jail area in a cell, in the day room I believe, and we asked the Jailer to bring him to this room that I described to you, and I reintroduced myself to Mr. Teffeteller to make sure that he knew I was Criminal District Attorney; at that time I told him that I wanted to talk to him about an incident that had occurred in Florida, and told him that I knew he had been warned of his rights by numerous people, but that I wanted to warn him again, and wanted him to listen very carefully, and if he had any questions to ask me why we could discuss it. Then I gave him the standard Miranda warning, and the warning required by our Court of Criminal procedure here in Texas.

Q. Would you kindly outline briefly the elements

of the warning, or advice that you gave him at that time?

A. Yes, I told him that he had the right to remain silent and not make any statement at all, that any statement he did make could be used against him at his trial, and that any statement he might make could be used as evidence against him in trial, that he did not have to answer any questions if he did not want to, that he had the right to have a lawyer present prior to or during any questioning to advise him whether to answer the questions or not, that if he was unable to employ an Attorney that the County would appoint him one, the Court would appoint him one, and it would be paid for at County expense, and he had the right to terminate the interview at any time.

Q. Did he indicate whether or not he understood those warnings and that advice?

A. Yes, he indicated to me that he did understand them.

Q. Were the proceedings which took place at the interview tape recorded or otherwise reduced to a physical form?

A. They were not tape recorded, Mr. Elliott

later reduced to writing a brief summary of that conversation.

Q. Did he present that summary to Teffeteller for signing?

A. No, he did not.

Q. Did Mr. Teffeteller sign any document at all as a result of that interview?

A. No, in my presence he did not.

Q. So following the warnings and indication by Mr. Teffeteller that he understood them, would you please furnish a brief summary of what was asked of him, and what he said in reply?

A. Yes. I also told him that I wanted to advise him about what the Texas law was in regard to oral statements, and told him with some possible exceptions that an oral statement in Texas was admissible in evidence, that the exceptions were res gestae and lead to the fruits of the crime, and we have a fairly involved oral confession statute that has to do with tape recording and impeachment of witnesses, which I told him that only briefly because we did not have a tape recorder, and I told him it did not apply. I also told him that I had no earthly idea what the statute in Florida was about oral statements,

oral admissions or oral confessions, I did not represent to him whether they were admissible or inadmissible, I told him I just didn't know, and still don't know. I then asked him if he would like to talk to me about the Florida incident, and he indicated to me that he would be glad to tell me about it, and he did so.

Q. So then briefly and in summary, what did he tell you?

A. He indicated that he had come to Florida with an individual whose name was George, who we knew about from our case here in Texas, that they had come from Tennessee, that they had escaped from the Penitentiary there, that they had been to some other states on their way to Florida, he specifically mentioned Indiana, and I think Illinois, but they had come to Florida on the particular day in question, which was sometime I believe in January, that he -

Q. Mr. Baxter, would it help you to tell you that the date on which the incident in Florida occurred was January 14th, 1979?

A. It would help only that he told me it was

been together in a Ford Torino, which we also

knew about from our Texas case here, which I was familiar with, and he had been staying in Daytona at an Apartment with a young lady, they had been out, I believe he told me it was a Sunday, but I cannot be positive about that, and they had been out trying to cash some checks, and indicated to me, they had gone "down the beach" - now, I am not sure what that means, but they had gone down the beach, and they were trying to cash these checks, and had had no luck at all, apparently, they had been trying to cash them at convenient stores, or liquors stores or both, that they had not been able to cash any of the checks. He said that George, the fellow that he was with, he called George, was driving the car, that he was sitting in the front right seat as a passenger, and they were going back into Daytona Beach from having been down the beach, when they saw a fellow that was in a jogging suit that was jogging down the road, and as he put it, George turned the car around, and the jogger stopped, that the jogger came to the passenger's side, his side, the window was down, and that they were going to ask for

some directions, that was apparently how the conversation started out, asked for some directions, and then George said to the jogger in the jogging suit "give me your billfold" and the jogger said something to the effect "Man, I am out here jogging, I don't have any money, I don't have a billfold on me, I am in my jogging suit", at which time George picked up a twelve gauge shot gun that had been in the front portion of the car in the floor board area, stuck it across Teffeteller's body, as in front of him, and shot the jogger twice and drove off. We then questioned Mr. Teffeteller had there been any conversation between he and George upon seeing the jogge and when George started turning the car, he had made a "U" turn to catch up with the jogger, about what they were going to do, he said there had been none: that George didn't say "let's ask the directions" or "let's get money" or anything of the sort," he just simply turned the car. We then asked him what did he think George was doing, and he said he, in his own mind, assumed George was going to rob the guy, but there had been no conversation about it.

Q. With respect to the question of who was driving the car with a passenger involved, is your memory of Mr. Teffeteller's statement to you very clear on that point that George was driving and not Teffeteller?

A. Yes, that's definitely what he told me. I questioned him then about the size of the barrel of the shot gun trying to determine in my own mind if what he was saying was right or wrong, how we should proceed, and he described it as a standard twelve gauge shot gun, and I asked him "did George pull the trigger, as the, you know, gun is by you," and he said that it was, and that he shot the jogger at very close range.

Q. Did he tell you what happened immediately after that, what action George took immediately after that?

A. Said George drove off.

Q. Did he ever say anything to you concerning that incident, the shooting of the jogger that was inconsistent in any way with the statement that you have now described?

A. Did he ever tell me anything else?

Q. Anything else concerning that same incident?

A. No, I never talked to him again about it.

Q. Did Mr. Elliott speak to Mr. Teffeteller in your presence?

A. Yes, Mr. Teffeteller asked me at one point whether there was a warrant from Florida, or if Florida charged him with the shooting there, asked Mr. Elliott if he had any knowledge of that, and he said he did not.

Q. Are you aware of any reason or inducement of any kind that caused Mr. Teffeteller to make this voluntary statement?

A. None that I know of, he had previously plead guilty the day before, our case was disposed of, had no further dealing with him.

Q. Do you have any knowledge as to Ranger Elliott ever making any statement or assurance to Teffeteller in your presence to the effect that the charges in Florida would be dropped if it was shown that Teffeteller, if he had not actually been the person who killed the jogger?

A. No, he made no such statement in my presence.

Q. In connection with the Harrison County case against Mr. Teffeteller, was there any other person arrested as having been involved in that offense?

A. There were two other individuals in the car, Mr. Poteet, a young lady whose name I do not remember, can furnish that to you later.

Q. Were there any other charges of the crime?

A. Mr. Poteet was arrested in Georgia, but was not billed by the Grand Jury: the young lady was not charged at all.

Q. Are there any charges now pending against Mr. Poteet in the State of Texas to your knowledge?

A. Not to my knowledge, certainly not here in Harrison County.

Q. Are you aware of any that were pending against him other than the case which involved Mr. Teffeteller in the past?

A. I believe there were maybe some check charges in Florida, but I am not sure about that.

Q. None in Texas that you know of?

A. None that I know of.

Q. So that in dealing with Mr. Poteet and his alleged involvement in the offense, did the State of Texas ever offer Mr. Poteet immunity from prosecution in return for his cooperation against Mr. Teffeteller?

A. We did not offer him immunity, we certainly, if there had been a jury trial we would have expected him to testify, it would not have done so under an immunity situation because we had decided that he had no criminal involvement in the offense itself, in the shooting itself, so there would not have been an immunity situation but we certainly would have expected him to testify, yes.

Q. Would you say that Mr. Teffeteller, in the interview you had with him, was being cooperative in helping to clear the Florida case?

A. He talked very freely, didn't hem and haw and beat around the bush, he appeared to be a very bright young man and talked very freely.

Q. Were you made aware Mr. Baxter, at his own request, Mr. Teffeteller underwent a polygraph examination by an Examiner in Texas?

A. I am familiar with the fact that in Tyler he was given at least one polygraph examination, I don't believe it was at his request, we asked him if he would like to take a - if he would take a polygraph on the Florida case, and he said that he would. I don't believe he originated

that request, but he did take it, as I understan
it, I did not witness that.
Q. Have you received a report from the
Examiner of the results of the test?
A. I have no written report from the Examiner
no, sir.
Q. Did you receive an oral report, or were
you made aware of the result of the test?
A. Yes, I was, in that I was told by the Florid
Investigator, Mr. Eaton, I believe, that Mr.
Teffeteller had during the test, had fidgeted,
coughed contrary to the instructions of the
Polygraph Examiner, and the Polygraph
Examiner said it was very hard to get a reading
on him.
Q. In the Texas case in which you participated
as the prosecuting attorney, was Mr. Teffetelle
represented by counsel?
A. Yes, he was.
Q. Are you able to give me the name and
address of that Attorney?
A. Yes, sir, Mr. Joe Perkins, he is a sole
practitioner here, his office is directly across
the street here.
Q. I saw his sign.
A. I can give you his P. O. Box, I am not sure
what that is.

Q. I was interested in finding out the extent of participation by Mr. Perkins in the case to which he was assigned to represent Mr. Teffeteller.

A. I don't know what he and Mr. Teffeteller discussed. I do know that he came to us after he was appointed by the Judge and wanted to know what we had, and our policy generally, is that we had people going through our files, and certainly under Texas law we have to give them a copy of the statements which we had from Mr. Teffeteller, we gave him a copy of his statement we also gave him copies of the young lady's statement, and Mr. Poteet's statement; we gave him results of our autopsy performed by a Pathologist here, in general, we gave him our entire file.

negotiations, plea bargaining?

Q. He negotiated with you for the disposition that actually occurred?

A. That's right, yes. It was thirty years. Actually, it is not less than five nor more than thirty is the way the Texas sentence runs

Q. Do you have any knowledge or have you been advised concerning procedures which were employed in procuring Mr. Teffeteller in the State of Florida, that is to say the method by which he was removed from the State of Texas where he was serving a prison sentence to face the Florida charges, and particularly, I am interested in whether or not extradition proceedings were conducted in any court?

A. After our interview on the 21st. of March, '79, Mr. Teffeteller was transported to Texas Department of Corrections, to what we call the Diagnostic Center. I am not sure of the exact date, but I believe it was possibly the 22nd. or 23rd, we made arrangements to have him transferred from that Unit to a Unit near Palestine to be convenient to Tyler, Texas, but after that I've not seen Mr. Teffeteller and I don't know what arrangements were made or what procedure was followed. He has not been in Harrison County since that time.

Q. So, it would be accurate to say that if extradition proceedings were undertaken, they were not undertaken in Harrison County, Texas.

A. That would be a hundred percent right, yes.

Q. Do you happen to have in your office any copies or tapes or statements made by persons other than Mr. Teffeteller concerning the Florida case?

A. No, I do not.

Q. You say Mr. Baxter, that the only interview you conducted with Mr. Teffeteller, was the one that occurred in Marshall, Texas, on March 21st, or were there others?

A. I did not interview him in regard to the Florida case at any other time other than that; now, I had seen Mr. Teffeteller when they brought him back from Georgia, I had seen him in the Sheriff's Department, I think the day after he was back here, and one of the Deputies or one of the Investigators told me who he was, and I had seen him then. I do not believe I talked to him then, if I did it was nothing more than "hello". When Mr. Perkins was appointed to represent him I believe that - we have frankly a very bad habit of having prisoners brought out of the jail and brought to our office for attorneys to interview them, because the attorneys hate to go to the jail because there is not a real good place to talk to their client,

and I believe that Mr. Teffeteller may have come through my office to talk to Mr. Perkins, but I did not interview him at that time, but I had seen him on a couple of occasions prior to him going to court on the 20th, and then talked to him on the 21st.

Q. Is there anything further concerning the Florida case in which you have knowledge, that I have not yet asked you about, and you haven't spoken about?

A. I think that you probably know the two Florida Investigators came here on the 21st, and we talked to them; they at that time generally outlined what their case was.

Q. I was really interested more in what you might have known concerning Mr. Teffeteller other than what the Florida Investigators knew?

A. No, I had been informed by the I believe Sheriff Oldham who had the information coming from I think the Jailer. Mr. Teffeteller had discussed the Florida case with one or more inmates in the Harrison County Jail, and we passed that information on to the Florida Investigators.

Q. You did not conduct interviews of those Jail Inmates?

A. No, I did not. I had also talked to Mr. Watson prior to our plea of the 20th, and our conversation the 21st, and we had discussed with him whether or not if we got our case disposed of, if he would like for us to talk to Tefteteller about the Florida case, and we also discussed whether or not they wanted us to offer him a polygraph, and I believe I had two conversations with Mr. Watson about that. On the first conversation we had decided to sorta leave the question in limbo, and the second conversation we had decided that if he at all wanted to talk about the Florida case that we would offer a polygraph, and that that would probably be conducted in Texas.

MR. PEARL: Thank you sir, that's all I have.

CROSS EXAMINATION

MR. WATSON:

Q. You mentioned one date, the 21st. of March, as when the Florida Officers talked to you, my notes reflect that the Tyler, Texas Polygraph examination and interview by them was the 28th. of March. My notes may not be right -

A. That's right, if I said the 21st. I was in error. The Tyler interview was conducted on

March 28th. in Tyler. Two investigators flew into Shreveport, Louisiana, my investigator picked them up, he fed them goat and took them to Tyler.

MR. WATSON: No further questions.

(Signature of Witness Waived)

REPORTER'S CERTIFICATE.

THE STATE OF TEXAS

COUNTY OF HARRISON

I, Christine Price, a Certified Court Reporter and Notary Public in and for Harrison County, Texas, do hereby certify that the facts as stated in the caption hereto are true; that the above and foregoing answers of the witness, SAM BAXTE to the interrogatories, as indicated, were made before me by the said witness after being first duly sworn to testify the truth, the whole truth and nothing but the truth, and the same were reduced to typewriting by me; that the above and foregoing deposition as set forth in typewriting is a full, true and correct transcript of the proceedings had at the time of taking said deposition.

I FURTHER CERTIFY that I am not, in any capacity a regular employee of the party in whose behalf this deposition is taken, nor in the regular employ of his attorney, and I certify that I am not interested in the cause, nor of kin or counsel to any of the parties.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 21st. day of January, 1980.

Certified Court Reporter
and Notary Public in and
for Harrison County,
Texas.

then we proceeded before the jury. Then, of course, the comment was made before the jury on some of the testimony that was taken on proffer and, of course, that was the basis for the motions for mistrial. I assume that the motion was denied on the merits.

However, I objected to those on the grounds of the timeliness of it, as well as objected to the motion on the grounds that it was admissible. I would -- again, I don't want to entertain issues already heard, but based on what happened at the trial, in an abundance of caution, I would agree that the issue can be heard from the State's standpoint, since it wasn't clear as to the grounds for the Judge's ruling.

MR. PEARL: I just wanted the Court also to know that I wasn't misrepresenting the State of facts, and I want to make that clear.

THE COURT: We'll entertain the motion again, and I'll listen to it again. Gentlemen, let's use our time as best we can. We only have half an hour.

MR. PEARL: I now call the Defendant, Mr. Teffeteller to testify.

(THEREUPON, the Defendant, Robert Allen Teffeteller, was sworn and put under oath.)

EXAMINATION BY MR. PEARL:

Q For the record, state your name.

A Robert Allen Teffeteller.

Q Are you the Defendant in this cause, State of Florida versus Robert Allen Teffeteller?

A Yes, sir.

Q Mr. Teffeteller, are you familiar with the contents of the Second Supplemental Motion to Suppress which has been filed by me in this cause?

A Yes, sir. I have examined the Motion and read it.

Q Now, on February 25th, 1979, did you find yourself in Clayton, Georgia?

A Yes, sir, I did.

Q Did you have an automobile?

A Yes, sir, I did.

Q And, on that date, did you have any contact with local police?

A Yes, I was arrested by the Clayton County Sheriff's Department.

Q Were you in your car?

A Yes, sir. The police swarmed on me while I was stopped at a red light. There were six or seven cars.

Q Were you alone in the car, or was there someone with you?

A No, sir. There were three of us in the

Q Are you suggesting they said to you that if you did cooperate that there would be some kind of out for you?

A I don't recall exactly what all transpired. It's been so long ago. I forget exactly what happened.

I know that my feelings towards the things were that they were telling me that they had all these shotgun shells, and that they could prove that I had shot a man here in Florida with those shotgun shells, and about where I was on the 9th that this thing was supposed to have occurred and all this. I gave them statements to the effect of telling them where I was and what I was doing on that night.

Q Well, I just wondered to what extent your decision was to make those statements at all, rather than to exercise your right to remain silent and to refuse to give them permission to search your car without a search warrant was affected by the officer's original inventory search made by Clayton County Police, in which the shotgun shells and other things had been seized or examined?

A Well, sir, I felt that due to the search being done, that I, more or less, didn't have any right at all. It appeared to me that irregardless of what I felt or thought my rights were, that I was not getting

any rights at all; I just had none. So, I went ahead and gave statements in trying to talk to the officials.

Q Now, let us assume for a minute for the sake of this discussion that when the Florida officers had come to talk to you they had never seen the interior of your car, and that the interior of your car had never been searched or any items therein seized or examined. Do you have a belief or an opinion as to whether under that state of facts you would have given them consent to search or made the statements to them that were made?

A No, sir. I would not have let them search the car, nor would I have talked to them.

Q Now, this occurred, did it not, on or about February 27th, 1979; your contact with Eaton and Legg?

A Yes, sir. I believe that's close.

Q Did there come a time shortly after that when Texas officers came and got you in Georgia and transported you to Marshall, Texas in Harrison County?

A Yes, but the same day that Mr. Eaton and Mr. Legg were there, they came up and they told me early that morning that the Texas officials were there to pick me up, but that I was being held to wait on the Florida officials; that they were on their way up to talk

with me, and the Texas officials had agreed to postpone their trip back until after Eaton and Legg had a chance to talk to me.

Q So, you would have arrived in Marshall, Texas somewhere around the 28th or thereabouts, of February, 1979?

A I believe it was on the 27th. I believe around between 10:00 and 11:00 o'clock at night that I finally reached Marshall, Texas.

Q Now, during the time that you were in Clayton County, Georgia, after your arrest and before officers Eaton and Legg came to interview you, had anybody offered to appoint counsel to advise you or to represent you in connection with proceedings that were taking place in Clayton County, Georgia?

A Well, sir, they took us before a Magistrate I believe, who read the charges to us and set a bond on the thing. As far as offering to appoint counsel, no, sir, I don't believe he did.

Q Well, did either -- you say the Magistrate did not. Did any law enforcement officer or other officials in the state of Georgia in Clayton County, offer to you to appoint to have counsel appointed to represent you and advise you in connection with the proceeding in Georgia?

A To the best of my recollection, no, sir.

Q All right. Now, after you arrived in Marshall, Texas, you were charged there with murder, and that case was disposed of?

A Yes.

Q And, on or about March 21, 1979, in Marsha Texas, did there come a time when you had been intervie by Mr. Sam Baxter, the Criminal District Attorney together with Texas Ranger Glen Elliot and Harrison County Sheriff Bill Oldham?

A Yes, sir. At the time, Mr. Oldham was not Sheriff. He was just a Captain under the Sheriff's Department.

Q He was appointed Sheriff shortly thereafter; is that right?

A I think within a couple months. Maybe a month of that interview, he was appointed Sheriff.

Q Now, did that interview have relevance, or was it connected with the Texas case or with the Florida case that you're charged with here?

A Well, sir, they approached me about what I thought was the Texas case. They were talking more about it, but it turned out that they wanted to speak about the Florida case and about the possibility of taking a lie detector test, polygraph test.

Q Prior to that interview, were you advised by Mr. Baxter or Ranger Elliot or Sheriff Oldham once again about your rights under the so-called Miranda procedure?

A Well, sir, they did not read me my rights. What they did was to -- I believe Mr. Baxter or Ranger Elliot, I believe it was Ranger Elliot who stated, "Mr. Teffeteller, you've been advised before of your rights." And, he stated now that you're still under those rights and, you know, that would still be extended.

He told me that I had been advised of them earlier, and I was, more or less, still under them. But, as to say that he read the rights to me, he didn't read the whole thing to me. No, sir.

Q I think you testified before in the proceedings that counsel had been appointed for you to represent you in the Texas murder case; is that not true?

A Yes, sir.

Q Was he present during this interview on March 21 that I've just referred to?

A No, sir.

Q Did anybody offer to send for him so that he would be present to advise you, to represent you in this interview?

A No, sir.

Q Now, did any of those officers present say anything to you concerning the law governing the admissibility of evidence of oral and unsigned statements by accused persons in criminal cases?

A Well, sir, Mr. Baxter -- I don't know what his title is out there.

Q Criminal District Attorney.

A Yes.

Q Was he a lawyer?

A Well, sir, he was a prosecuting attorney. I guess he would be a lawyer. He did advise me, more or less, along the same grounds as I had been advised by other officers. That's the only thing that would be admissible in court were the written statements reduced to writing and signed by myself. Anything else was inadmissible.

He used some terminology along the lines of it being hearsay and inadmissible if it was not reduced to writing and signed.

Q Was there a tape recording present at the time of this interview?

A No, sir.

Q Was the statement that you made later reduced to writing and signed by you?

A No, never was.

Q Now, obviously you knew that they were talking to you at least in part about the Florida case?

A Yes, I did.

Q Now, what impression or understanding did you receive from the advice given you by Mr. Baxter concerning the admissibility of oral statements as to whether or not any statements you made orally and not signed would or would not be admissible in a Florida court?

A Well, sir, it was my understanding that at the time that it was inadmissible as far as the law goes. He did not sit there and say it's inadmissible in Texas and it would be admissible in the state of Florida. To me, the law was the law.

Q You were unaware?

A I was under the impression that it was inadmissible anywhere under the law.

Q What legal training or experience have you had in your lifetime with respect to legal advice or legal representation or legal knowledge concerning criminal law?

A None. I have never had any education in that.

Q To what extent did that advice concerning

the admissibility of oral unsigned statements given to you by Mr. Baxter induce you or pursuade you to make statements concerning the Florida case to the three gentlemen you named?

A Well, sir, after Mr. Baxter talked with me about the admissibility and inadmissibility of testimony, statements, however you want to word it, Ranger Elliot then began to talk with me again about the polygraph examination, stating once again that he had been in touch with the Florida officials and that the Florida officials had told him that if I would agree to take a ploygraph examination and prove to them through that examination that I did not pull the trigger and shoot the man in Florida, that they would just leave me alone; there would be no charges against me, and they would quit harassing me.

Ranger Elliot began to talk to me about that; telling me I should do this and I should do that. We discussed that quite a bit and he had come to me earlier alone and approached me about a lie detector test or examination. I told him then that, hey, I didn't know anything about that. I wanted to think on it and try to get some advice on it. I was never able to get any advice.

At that particular time, when he talked to me

the second time, I decided then, you know, well, all I can do is go ahead on and see what is going to occur. So, I took the man to his word and agreed to take a polygraph test.

Q With respect to the oral statements which you made to Baxter, Elliot, and Oldham -- let us suppose for a minute that Mr. Baxter had not advised you at all concerning the admissibility of oral statements in Texas or any other state. What would have been your decision in that event about making a statement concerning the Florida case to them?

A Well, sir, at the time I just had been sentenced to thirty years in the penitentiary for a murder in Texas. I was more or less scared to death and didn't know what to do. To be perfectly blunt, there's no way that I would have ever said anything to him about any other charges whatsoever without someone there to tell me whether I was doing right or wrong. He had told me that the only way was to be reduced to writing and signing by me. So, I took the man to his word.

Q So, it's your testimony then in making the oral statements to Baxter, Oldham, and Elliot, that you did so in the belief and under the inducement that it would not be used against you and would not be

admissible in evidence?

A Yes, sir.

Q To what extent, if any, would you say that the statement that you made to Baxter, Elliot, and Oldham, was influenced by the original illegal search and seizure of the items in your car in Georgia? That is, I guess I'm asking whether or not you were feeling that your rights had been vitiated and that you no longer had a right to refuse or remain silent continued after you left Texas and arrived in Georgia? I mean left Georgia and arrived in Texas.

A Well, sir, I felt that once my rights were taken away from me, just because people moved from one place to another, I didn't feel that that would restore my rights in any way or in any manner there in the state of Texas. I damn sure wasn't showed anything toward -- saying hey, you've got these rights and you can exercise these rights. So, I was still under the impression that I had no rights.

Q Well, you have been appointed a lawyer to represent you in the murder case; had you not?

A Yes, I had been appointed one.

Q Did you have access to him? Did you talk to him?

A No, I did not. While in Harrison County

Jail, in order to make a phone call, normally all anyone would have to have done was to talk to an officer and get out and they would be allowed to make the call.

While there, I tried on many different occasions to get out. I wanted to call Tennessee and seek legal counsel in Tennessee through an attorney that I had there that I knew and I could talk with and ask him what was going on. I was denied the phone call. I was allowed one phone call there in the jail the whole time I was there. At that time, I had not been appointed counsel when I made that call.

THE COURT: Counsel, do you want to wind this up for today without prejudice for you to continue on Friday?

MR. PEARL: Yes, Your Honor.

(Thereupon, the proceedings were adjourned.)

STATE OF FLORIDA)
)
COUNTY OF VOLUSIA)

I, Patricia Cranfill, do HEREBY CERTIFY that the foregoing 42 pages constitute a true and complete transcript of the proceedings taken and reported by me in the aforementioned cause at the time and place herein set forth, same having been before the Honorable S. James Foxman, Circuit Judge, said cause being Case 79-931-BB: State of Florida versus Robert Allen Teffeteller, Defendant.

WITNESS my hand and official seal in the city of Daytona Beach, county of Volusia, state of Florida, this 9th day of June A.D. 1981.

Patricia Cranfill
Deputy Official Court Reporter
Seventh Judicial Circuit of Florida
Notary Public, State of Florida at Large

My commission expires 1/9/84

STATEMENT OF RIGHTS: ACKNOWLEDGEMENT AND WAIVER OF RIGHTS

DATE 3-28-79 PLACE Tyler, Texas TIME 8:45 P.M.

A-2618
A.I.C.

STATEMENT OF RIGHTS

Before you answer any questions or make any statement, you are entitled to and must understand your rights as a citizen.

1. You have the right to remain silent and not testify.

2. If you do testify or make statements, anything you say could be used against you in a court of law in the event criminal or other proceedings are instituted.

3. You have a right to consult with a lawyer before you answer any questions or make any statement; you further have the right to have an attorney of your choice present during the time you are questioned.

4. If you desire an attorney and cannot afford one, an attorney will be appointed to advise you prior to any questioning.

5. If you answer questions or make any statement without consulting a lawyer or without having a lawyer present during questioning, you will still have the absolute right to stop answering questions or making any statement until you consult with a lawyer or have a lawyer present during further questioning.

x Det. C. R. Rigg
State Attorney's Office

ACKNOWLEDGEMENT AND WAIVER OF RIGHTS

The above statement of my rights has been read and explained to me and I fully understand what my rights are. I am ready and willing to answer questions or to make a statement without first consulting with a lawyer or without having a lawyer present during questioning. In waiving my rights to remain silent, I wish to state that no promises or threats have been made to me and no persuasion or coercion has been used against me.

x Robert Allen Shoffeitt
Affiant

The above acknowledgement and waiver of rights has been signed in the presence of:

WITNESS: W. S. Easton ADDRESS S/A Office

WITNESS: M. T. McPeay ADDRESS P.O. Box 4428
Dallas TX

STATE'S EXHIBIT #29

ORIGINAL

Supreme Court U.S.
FILED
FEB 6 1984
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

CASE NO. 83-6148

ROBERT A. TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE TO

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF FLORIDA

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Fourteenth Amendment to the United States Constitution	1

QUESTION PRESENTED

WHETHER THIS COURT SHOULD GRANT CERTIORARI TO REVIEW THE STATE COURT'S FINDING THAT PETITIONER'S STATEMENT WAS VOLUNTARY, WHERE SUCH FINDING WAS MADE LARGELY UPON THE CREDIBILITY OF WITNESSES AND WHERE THE STATE COURTS PROPERLY APPLIED THIS COURT'S PRECEDENTS IN PASSING UPON THE QUESTION.

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I. OPINION BELOW

The Florida Supreme Court's opinion in this cause was reported as Teffeteller v. State, 439 So.2d 840 (Fla. 1983), and a copy of such is included in Respondent's appendix (See Appendix, part A).

II. JURISDICTION

Review is sought pursuant to 28 U.S.C. §1257(3).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Although Petitioner has contended that the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, as well as Florida's capital sentencing statute, §921.141 Fla. Stat. (1981), are involved sub judice, inasmuch as Petitioner's sentence of death has been vacated, Respondents are unable to see the applicability of the statute or the Eighth Amendment.

IV. STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case, but suggests that its discussion of the procedural framework within which the instant issue was presented to the state courts is inadequate. The following represents the factual background necessary to view Petitioner's question in the proper perspective:

Simply by way of background, three states are involved in this case. After committing the instant crime, Petitioner made something of a cross-country tour. He was initially arrested in Georgia, in reference to a Texas fugitive warrant; his vehicle, which displayed clearly visible bloodstains and bullet holes, was held by the Georgia authorities

as an instrument of the crime involved in Texas. During Petitioner's "stop" in Georgia, he was visited by two Florida detectives in reference to the instant charges, at such time, on February 27, 1979, he gave such detectives written consent to search his vehicle, such search producing some of the physical evidence introduced against Petitioner at his trial in this matter, and further provided statements to the gentlemen. After entering a plea as to the charges facing him in Texas, Petitioner made a statement to the Texas officials in reference to the Florida charges; such statement, on March 21, 1979, is the subject of the instant petition. One week later, while still in Texas, Petitioner made further statements to the Florida investigators, again in reference to the instant charges.

The statement at issue in this proceeding, i.e. that made on March 21, 1979 to various Texas authorities, was, as noted, one of several statements of Petitioner used against him at his trial and the instant basis alleged for suppression, i.e. lack of voluntariness of such due to an alleged misleading advisement, was only one of such bases presented to the trial court. Petitioner alleged inter alia that the statement at issue had been obtained in violation of his right to extradition and that the statement was a by-product of an earlier allegedly illegal search and seizure in Georgia of his vehicle in February of 1979. Petitioner raised something of an "omnibus" theory of suppression, arguing that the physical evidence obtained from his vehicle by the Florida officials, as well as all subsequent statements by him to the authorities of Texas or Florida, should be suppressed on the basis of the illegality

of such initial vehicle search. Petitioner's theory was that, after realizing that his car had been searched improperly, he felt that he possessed no further rights left to waive. Hence, all subsequent statements, even those following the advisement pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), were less than voluntary. (See Appendix, Part D, 197-200).

In order to resolve the myriad suppression issues raised, the trial court held an extended suppression hearing on October 8-13, 1980; Petitioner's extradition argument was resolved prior to his first trial and was not reasserted. At the hearings, Petitioner testified, as did state witnesses Eaton and Elliott; with the concurrence of counsel, the trial judge also considered the prior testimony and depositions of witnesses Baxter, Legg, Eaton, Elliott and Blankenship. Judge Foxman made an explicit ruling as to the issue Petitioner seeks this Court to consider; the judge starkly found Petitioner to be untruthful and stated that he chose to believe the law enforcement officers in areas where the testimony conflicted. Specifically, the judge found that District Attorney Baxter had told Petitioner that he [Baxter] did not know Florida law regarding the admissibility of statements and that Petitioner had not been misled thereby. All statements were found to have been knowingly, freely and intelligently made (See Appendix, Part C, 31-196, 192-3; Part D, 201-363).

Respondent would also note that at the point during Petitioner's trial when his statement of March 21, 1979 was introduced, Petitioner offered no contemporaneous objection (Appendix, Part B, Pages 21-30). Petitioner had earlier moved to exclude the statement as an improper attempt at

impeachment (Appendix, Part B, pages 13-17); however, no reiteration was made of the original suppression motion. Whereas Petitioner did object at the time that his second statement, that of March 28, 1979, was admitted, it is unclear in the instant petition whether Petitioner is arguing that admission of the March 21st statement was error in isolation, or whether admission of such statement was error in regard to the part it played in "admitting" the second statement of March 28th, or both.

On appeal, Petitioner raised all of his suppression issues together and the Florida Supreme Court did not comment upon any in its decision in this cause.

V. REASONS FOR NOT GRANTING THE WRIT

The rather anomalous procedural posture of the instant issue, as described above, is one cogent reason that the instant writ may safely be denied. Petitioner's failure to object at trial to the admission into evidence of the March 21, 1979 statement constitutes procedural default under Florida law, see e.g. Roban v. State, 384 So.2d 683 (Fla. 4th DCA 1980), and would have similar effect in a federal habeas corpus proceeding. See Wainwright v. Sykes, 433 U.S. 72 (1977). Accordingly, the fact that the Florida Supreme Court was silent on this issue is perhaps not surprising and Respondent would contend that Petitioner has failed to demonstrate that he properly presented this question below. In Street v. New York, 394 U.S. 576 (1969) this Court held that where the highest court of a state has failed to pass upon a federal question, it will be assumed that the omission was due to lack of proper presentation in the state courts, unless

demonstrated otherwise. Street applies in the instant situation and Respondents would simply note that their "merits" argument as to this issue during Petitioner's state appeal was made out of an abundance of caution, in light of the interlocking nature of Petitioner's suppression arugments, and cannot be said to have conferred preservation upon this point.

In the same vein, as noted in the preceding statement of the case, the question presented in the instant petition was one of several suppression issues raised below. Whereas Respondent does not question Petitioner's right to "pare-down" his argument for presentation at this juncture, this Court is the first to consider Petitioner's particular argument without all of its "protective coloring", i.e. the other suppression arguments. Once the instant voluntariness question is placed "center stage", it is clear that Petitioner's prayer for relief constitutes a request for this Court to afford him a second appeal or to, at minimum, redetermine the credibility of those witnesses who testified in the state proceeding. Respondent does recognize that this Court has granted certiorari in instances where it has been alleged that a state court has allowed into evidence an involuntary confession. See e.g. Chambers v. Florida, 309 U.S. 227 (1940); Blackburn v. Alabama, 361 U.S. 199 (1960); Haynes v. Washington, 373 U.S. 503 (1963); Brooks v. Florida, 389 U.S. 413 (1967). However, in contrast to the above, in this case no precedent of this Court has been overlooked or misapprehended, no factual determination has been made where support for such was lacking in the record and no consti-

tutional wrong has been left unredressed. No reason exists for this Court to exercise its discretionary jurisdiction to review the instant conviction, in that Petitioner's individual dissatisfaction with the rulings of the state courts, based in large part upon assessment of witness credibility, does not present a question of overriding national import.

Presumably, had the Florida courts misapplied the law in this case, their "error" would have occurred in relation to the cases cited by Petitioner, to-wit: Miranda, supra, Johnson v. Zerbst, 304 U.S. 458 (1938), Greenwald v Wisconsin, 390 U.S. 519 (1968), Clewis v. Texas, 386 U.S. 707 (1967), Townsend v. Sain, 372 U.S. 293 (1963) or Blackburn v. Alabama, supra. Yet, a close reading of such cases results in only doubt as to their applicability or a recognition that, to the extent that they are applicable, they have been correctly followed by the state courts below. Certainly, in contrast to the four cases last named, the instant case does not represent an instance in which the State's own "facts" indicate that a constitutional wrong has occurred. In Townsend, it seemed indisputable that the prisoner's confession had followed the usage of a chemical truth serum; in Blackburn, doubts as to the prisoner's mental capacity seemed inescapable. Similarly, in Clewis and Greenwald, the confessions at issue had been made by those suffering such physical infirmities as prolonged lack of food or sleep. None of these conditions have been alleged sub judice and Respondent is additionally unable to hypothesize any manner in which the instant decision of the Florida courts could be incompatible with Johnson or Miranda.

Petitioner then, presumably, must be arguing that the state judge's finding of fact is not one supported by the evidence. Yet, it is clear that the judge simply exercised his prerogative and decided to disbelieve Petitioner, accepting instead, in areas of conflict, the testimony of state witnesses. Such witnesses, both through in-court testimony and deposition, indicated that Petitioner had been advised of the customary Miranda warnings prior to any discussion of state law or the making of any statement on March 21, 1979. Ranger Elliott's testimony makes it clear that Petitioner expressed a willingness to discuss the Florida incident before the prosecutor made any statements as to admissibility. In any event, by this point Petitioner, as was customary, had already been told that anything that he said could be used against him. Elliott further stated that it was Petitioner who initiated the discussion of Texas law and that he was clearly told that no one knew the applicable Florida law on the admissibility of oral statements. The state judge, who observed Petitioner's demeanor during his testimony at the suppression hearing, expressly found Petitioner's tale of "confusion" to be one unworthy of belief. In his deposition, the prosecutor had described Petitioner as a "very bright young man" and sufficient evidence exists in the record to support the finding that Petitioner was not misled by any ambiguity in reference to Texas law.(See App., pt. C, 149, 153-156; pt.D, 321-4, 330).

Further, in passing upon the voluntariness of the statement at issue, the state trial judge applied the "test" enunciated by this Court, i.e. that of looking to the totality of the circum-

stances. See e.g. Culombe v. Connecticut, 367 U.S. 568 (1961); Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Hutto v. Ross, 429 U.S. 28 (1976). It is Petitioner who is in a sense "violating" this test, as he insists that one factor, his alleged mental confusion, must override all others. Accepting such position would in essence make all confessions voidable at the subsequent desire of a "repentant" confessor. Whereas only Petitioner, and all others in his position, can provide direct proof as to his state of mind at the time of the confession, it is by no means impermissible for a trial judge to look at other factors in assessing the voluntariness of such statement or confession.

In this case, the judge knew that Petitioner had given two other statements to police officers regarding this case, one prior in time to this statement* and one subsequent. Both such statements were given to Florida officials, one while Petitioner was in Texas, and one was oral and not transcribed. Petitioner made each one of these statements after advisement that anything he said could be used against him and, it must be noted, that at the time Petitioner gave his March 28th statement, i.e. one week after the incident in question, he never asked the Florida officials about the admissibility of oral statements under Florida law. Hence, he waived any opportunity he had to clear up any "confusion", assuming such ever existed in the first place. Additionally, the judge in this case was entitled to look to the fact that Peti-

* Petitioner gave a statement to Florida officials on February 27, 1979 which was not introduced at trial; prior to such statement, he executed a signed waiver of rights form. (See Appendix, Part D, 202, 203).

tioner never requested an attorney, never even alleged coercion, mental, physical or otherwise and, though incarcerated, seems to have suffered none of the physical or mental distresses incumbent upon one in his position. The judge could also note that the statement at issue, in a large sense, was a mixed one on culpability; Petitioner alleged that his since deceased co-defendant had actually pulled the trigger and committed the murder.

Adding all of this up, Petitioner failed, and continues to fail, to demonstrate that his will was overborne, whether intentionally or otherwise, by any statement of the Texas officials; there is no reason in the record to hypothesize that his statement was not one voluntarily given. In contrast to many who seek to recant their convictions, Petitioner was not under age or a mental defective or one unschooled or of low intelligence or in a particularly vulnerable state due to continued interrogation or sensory deprivation at the time the statement was made. Petitioner was repeatedly advised throughout the investigation of this case of his right not to make statements and of the attendant risk in reference to such; Miranda warnings contain the broad statement that anything said can be used against the speaker. Petitioner's tale that such warning had lost meaning for him is not worthy of credence and the trial judge in this case was in the best position to assess the likelihood that this statement, as opposed to all others given by Petitioner, was involuntary.

The presence of these other statements, as well as of other evidence against Petitioner, not cited in the instant petition, to-wit: physical

evidence obtained from his vehicle and statements made by him to private persons admitting guilt, renders quiestionalbe the extent to which a grant of certiorari would benefit Petitioner, in reference to the instant conviction. His second statement of March 28, 1979, which was played for the jury at trial, was much more detailed and graphic than that at issue; that of March 21, 1979 was primarily used for comparison purposes. Inasmuch as Petitioner has apparently abandoned his Fourth Amendment claim regarding his statements, i.e. his argument that all statements are suppressible fruits of an illegal vehicle search, the extent to which the "fate" of any one statement overshadows that of another seems questionable.

In specifically analyzing the extent to which one "involuntary" statement may taint any successive statement, courts have looked primarily to the identity of the parties, i.e. whether the police agencies involved were acting "hand in glove". See United States v. Thor, 512 F.2d 811 (5th Cir.), cert. denied, 423 U.S. 1014 (1975); United States v. Gresham, 585 F.2d 103 (5th Cir. 1978). Petitioner has never made an allegation that the Texas and Florida officials were acting in concert and, accordingly, it would not seem that the statement of March 28th is "vulnerable" due to any attack on its predecessor. Additionally, even if the traditional Fourth Amendment "taint" analyses were applicable, i.e. those utilized in Brown v. Illinois, 422 U.S. 590 (1975), Dunaway v. New York, 442 U.S. 200 (1979) and Taylor v. Alabama, 457 U.S. 687 (1982), such rationales would not benefit Petitioner. The statements in this case were separated by a week's time, given to different police personnel and,

certainly as to the more recent, given following supervening Miranda warnings and the execution of a signed waiver of rights. Thus, the bulk of the incriminating evidence against Petitioner remains admissible, regardless of the fate of any attack upon the instant statement, and the granting of certiorari sub judice would be of little benefit.

VI. CONCLUSION

For the foregoing reasons, Respondent maintains that the instant petition should be denied. Due to lack of proper objection at trial as to the admission into evidence of that statement at issue in the instant petition, Petitioner failed to properly present this question to the state court below. Additionally, assuming such courts did in fact consider Petitioner's claim, their rejection of it would be in accordance with this Court's prior precedents and would be supported by the facts as developed below. Lastly, the instant statement was one of several introduced against Petitioner at his trial, and Petitioner has not demonstrated that its exclusion from evidence would have tipped the balance in his favor.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

CASE NO 83-6148

ROBERT A TEFFETELLER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CERTIFICATE OF SERVICE

I RICHARD B. MARTELL, do hereby certify that I am a member of the Bar of the Supreme Court of the United States, and that I have served a copy of the Response to Petition for Writ of Certiorari to the Supreme Court of Florida, by depositing same in the United States mail, first class postage prepaid, as follows:

JAMES R. WULCHAK, ESQUIRE
Assistant Public Defender
Seventh Judicial Circuit
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All parties required to be served have been served on this 2nd day of February, 1984.

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